IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SOLAS OLED LTD.,	)(	CIVIL ACTION NO.
	)(	2:19-CV-152-JRG
PLAINTIFF,	)(	
	)(	
VS.	)(	
	)(	
SAMSUNG DISPLAY CO., LTD., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC.,	)(	MARSHALL, TEXAS
	)(	MARCH 8, 2021
	)(	7:59 A.M. - 2:22 P.M.
	)(	
DEFENDANTS.	)(	

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

P R O C E E D I N G S

07:54:59 (Jury out.)

07:55:00 COURT SECURITY OFFICER: All rise.

07:55:00 THE COURT: Please be seated.

07:55:01 Be seated, please.

07:59:01 Are the parties prepared to read into the record those items from Friday's portion of the trial that come from the list of pre-admitted exhibits?

07:59:14 MS. HENRY: Yes, Your Honor.

07:59:15 THE COURT: Please proceed.

07:59:17 MS. HENRY: Plaintiff's read into the record PTX-535 and PTX-536, as well as DTX-249.

07:59:26 THE COURT: Is there objection from Defendants?

07:59:29 MR. HILL: No objection, Your Honor.

07:59:31 THE COURT: Do Defendants have a similar rendition?

07:59:34 MR. HILL: Yes, Your Honor.

07:59:35 THE COURT: Please proceed.

07:59:36 MR. HILL: Defendants read DTX-244, DTX-248, DTX-249, DTX-252, DTX-253, DTX-254, DTX-1301, DTX-1302, DTX-1309, DTX-1310, DTX-1321, and PTX-509.

08:00:02 THE COURT: All right. Is there objection to that rendition from Defendants [sic]?

08:00:07 MS. HENRY: No objection, Your Honor.

08:00:09 THE COURT: All right. Thank you, counsel.

Counsel, have you decided whether you're going to ask me to seal the courtroom during closing arguments?

MR. HASLAM: This is Bob Haslam. We've conferred since we were in chambers. I believe based on what we've discussed that we don't need to seal the courtroom.

We would just like just as a safety valve the option that if something does come out rather than objecting during the -- during the closing arguments, we would take up the Court on the possibility of redacting if that happens.

THE COURT: All right. I don't anticipate that being a problem, but should something be a surprise, I have no problem discussing that with counsel after the fact.

MR. HASLAM: Thank you.

THE COURT: It's always important to the Court to wherever humanly possible to avoid the need to object during closing arguments.

Thank you, Mr. Haslam.

Let me say this to everyone present, including those of you in the gallery. The Court considers its final instructions to the jury and counsel's closing arguments to be the most serious part of a very serious process.

Therefore, I don't want people coming and going unless unavoidable. I don't want papers being rustled. I sure as heck don't want to hear any cell phones going off.

I don't want anything to happen that would be disruptive or divert the jury's attention from my final instructions or counsel's closing arguments.

If you need to leave, get up and leave now. If you need to move around, do whatever you need to do now. But once the jury comes in the courtroom, I expect people to be as quiet and respectful and as still as possible.

All right. Is there anything from either Plaintiff or Defendant that you're aware of that I need to address with you before I bring the jury in and we proceed?

MR. FENSTER: Not from Plaintiff, Your Honor.

MR. HASLAM: Not for Defendant.

THE COURT: All right. And for the record per counsel's request in chambers, supported by excessive begging, I have expanding the closing time from 40 minutes to 42 minutes per side. And we will take that into account in our time keeping.

All right. Let's bring in the jury, please.

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Good morning, ladies and gentlemen. Welcome back. Please have a seat.

Ladies and gentlemen of the jury, you have now heard all the evidence in this case, and I will now instruct you on the law that you must apply.

Each of you are going to have your own personal copy of these final jury instructions that I'm about to give you orally. You'll have these in written form for your review in the jury room when you retire to deliberate in a few minutes.

Accordingly, there is really no need for you to take written notes on these final jury instructions unless you particularly want to do so.

It's your duty to follow the law as I give it to you. On the other hand, and as I've said, you, the jury, are the sole judges of the facts in this case.

Do not consider any statement that I have made during the course of the trial or make during the course of these instructions as an indication to you that I have any opinion about the facts in this case.

Now, you are about to hear closing arguments from the attorneys for the parties. Statements and arguments of the attorneys are not evidence, and they are not instructions on the law. They're intended only to assist the jury in understanding the evidence and the parties' contentions.

A verdict form has been prepared for you. You will take this verdict form to the jury room, and when you've reached a unanimous agreement as to your verdict, you will have your foreperson fill in the blanks in that

form to reflect your unanimous answers, date it, and it should be signed by your jury foreperson.

Answer the questions in the verdict form as directed and from the facts as you find them to be. Do not decide who you think should win this case and then answer the questions accordingly to reach that result. Your answers and your verdict, ladies and gentlemen, must be unanimous.

In determining whether any of the facts have been proven in this case, you may, unless otherwise instructed, consider the testimony of all the witnesses regardless of who may have called them, and you may consider all the exhibits received and admitted into evidence regardless of who may have introduced them.

Now, some of the testimony you heard was translated from another language, in this case Korean. In considering that witness's or witnesses' testimony, it's not relevant whether their testimony was given in English or translated from another language into English. You should consider the translated testimony in the same way that you would consider testimony given in English.

Remember, ladies and gentlemen, you the jurors are the sole and only judges of the credibility of all the witnesses and the weight and effect to give to all of the evidence.

Now, in deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You alone are to determine the questions of credibility or truthfulness of the witnesses, and in weighing the testimony of the witnesses, you may consider the witness's manner and demeanor as reflected on the witness stand.

You may consider any feelings or interest they may have in the case and any bias or prejudice about the case that the witness may have, and you may consider the consistency or inconsistency of their testimony considered in the light of the circumstances.

Has the witness been contradicted by other evidence? Has his or her made statements at other times in other places contrary to what he or she said on the witness stand? You must give the testimony of each witness the amount of credibility and weight that you think it deserves.

You must also keep in mind, however, ladies and gentlemen, that a simple mistake does not mean that a witness is not telling the truth. You must consider whether any misstatement was an intentional falsehood or a simple lapse of memory and what significance should be attached to that testimony.

Now, unless I instruct you otherwise, you may

properly determine that the testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all of the evidence you believe that single witness.

As I've told you previously, the attorneys in this case are advocates for their competing clients, and they have a duty to raise objections when they believe evidence is being offered that should not be admitted under the rules of the Court.

When the Court sustained an objection to a question addressed to a witness, you must disregard the question entirely, and you may draw no inference from its wording, and you may not speculate about what the witness would have said if he or she had been permitted to answer the question by the Court.

On the other hand, ladies and gentlemen, if the objection was overruled by the Court, then you should treat the question and the answer just as you would treat any other question and answer as if the objection had not been made.

Also, by allowing testimony or other evidence to be introduced over the objection of an attorney, the Court did not indicate to you any opinion as to the weight or effect of such evidence.

Now, at times, ladies and gentlemen, during the trial, it's been necessary for the Court to talk with the attorneys outside of your hearing by asking you to retire to the jury room or by calling a recess and talking to them outside of your hearing while we were in recess and you were out of the courtroom.

This happens because during a trial, sometimes things arise that do not involve the jury. You should not speculate about what was said during such discussions that took place outside of your presence.

Now, there are two types of evidence that you may consider in properly finding the truth as to the facts in this case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts.

As a general rule, ladies and gentlemen, the law makes no distinction between direct evidence or circumstantial evidence but simply requires that you find the facts based on the evidence presented during the trial, both direct and circumstantial.

Now, the parties may have agreed or stipulated to some facts in this case, and when the lawyers for both sides stipulate to the existence of a fact, you must,

unless otherwise instructed, accept the stipulation as evidence and regard the facts as proven.

Also, certain testimony in this case has been presented to you through depositions. A deposition is the sworn, recorded answers to questions asked to a witness in advance of the trial. If a witness cannot be personally present to testify from the witness stand physically, the witness's testimony may be presented under oath in the form of a deposition.

Before this trial began, the attorneys representing the parties in this case questioned these deposition witnesses under oath. The witnesses were sworn, a court reporter was present and recorded the testimony, both the questions and the answers. Deposition testimony, ladies and gentlemen, is entitled to the same consideration as the testimony given by a witness in person from the witness stand during the trial.

Accordingly, you should determine the credibility and the importance of deposition testimony to the best of your ability just as if the witness had testified in person from the witness stand.

Now, while you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and the exhibits as you feel are justified in the light of common experience.

Said another way, ladies and gentlemen, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and the evidence in this case.

However, you should not base your decision on any evidence not presented by the parties during the trial, including your own personal experiences with any particular mobile device.

Unless I instruct you otherwise, and as I have told you, you may properly determine that the testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after you consider all the evidence you believe that single witness.

Now, when knowledge of a technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field, we call them expert witnesses, they are permitted to testify and to state opinions on those technical matters.

However, ladies and gentlemen, you're not required to accept or believe any such opinion. As with any other witness, it's solely up to you to decide whether to rely on an expert witness's testimony and opinions or not.

Now, certain things have been shown to you over the course of the trial that were illustrations. We call

these types of things demonstrative exhibits. Often we simply call them demonstratives.

Demonstratives, ladies and gentlemen, are a party's description, picture, drawing, model, something to describe an issue involved in the trial. Many times these demonstratives were shown to you as slides on the monitors that are before you.

If your recollection of the evidence differs from the demonstratives, you should rely on your recollection. Demonstratives, which are sometimes called jury aids, they themselves are not evidence, but a witness's testimony concerning a demonstrative is evidence.

Demonstrative exhibits -- demonstratives will not be available to you to view again during your deliberations in the jury room.

Now, in any legal action, facts must be proven by a required amount of evidence known as the burden of proof. The burden of proof in this case is on the Plaintiff for some issues, and it's on the Defendants for other issues. And there are two burdens of proof that you will apply in this case, the preponderance of the evidence and clear and convincing evidence.

The Plaintiff, Solas OLED Ltd., who you've heard referred to throughout the trial simply as Solas or as the Plaintiff, has the burden of proving patent infringement by

a preponderance of the evidence.

Solas also has the burden of proving willful patent infringement by a preponderance of the evidence.

Solas, additionally, has the burden of proving its damages for patent infringement by a preponderance of the evidence.

A preponderance of the evidence, ladies and gentlemen, means evidence that persuades you, the jury, that a claim is more probably true than not true. Sometimes this is talked about as being the greater weight and degree of credible testimony.

The Defendants in this case, Samsung Display Company Ltd., Samsung Electronics Company, Ltd., and Samsung Electronics America, Inc., these Defendants have the burden of proving invalidity of patents -- excuse me, of Solas's patent claims by clear and convincing evidence.

Clear and convincing evidence means evidence that produces, in your mind, an abiding conviction that the truth of the party's factual contentions are highly probable.

Now, although proof to an absolute certainty is not required, the clear and convincing evidence standard requires a greater degree of persuasion than is necessary for the preponderance of the evidence standard.

If proof establishes, in your mind, as the jury,

an abiding conviction in the truth of the matter, then the clear and convincing evidence standard has been met.

Now, as I've previously told you, ladies and gentlemen, these two burdens of proof are not to be confused with the burden of proof known as beyond a reasonable doubt, which is the burden of proof applied in a criminal case. It is never applied in a civil case like this.

You should not confuse clear and convincing evidence with beyond a reasonable doubt. Clear and convincing evidence is not as high a burden, but it is a higher burden than the preponderance of the evidence.

Now, in determining whether any facts have been proven by a preponderance of the evidence or by clear and convincing evidence, you may, unless otherwise instructed, consider any stipulations the parties may have entered into, the testimony of all the witnesses, regardless of who called them, and all the exhibits that were received into evidence over the course of the trial, regardless of who may have introduced them.

Now, as I did at the start of the case, I'll first give you a summary of each side's contentions, and then I'll provide you with detailed instructions on what each side must prove to win on each of its contentions.

As I previously told you, this is an action for

patent infringement, and this case concerns three United States patents. U.S. Patent No. 6,072,450, which you've heard referred to throughout the trial as the '450 or the '450 patent; U.S. Patent No.7,446,338, which you've heard referred to throughout the trial consistently as the '338 or the '338 patent; and U.S. Patent No. 9,256,311, which you've heard referred to throughout the trial as the '311 patent or the '311 patent.

And I will refer to these patents as the "patents-in-suit." I may also refer to them as the "asserted patents."

Now, Solas, the Plaintiff, contends that the Samsung Defendants have infringed the following claims of the patents-in-suit: Claims 4 and 5 of the '450 patent, Claims 5 and 9 of the '338 patent, and Claims 7 and 12 of the '311 patent.

These are the asserted claims.

Solas seeks money damages from the Defendants for allegedly infringing all of the asserted claims by making, using, importing, selling, or offering for sale in the United States certain smartphones and tablets, which I'll refer to as the "accused products."

For the '450 patent, the accused products are: The Samsung Galaxy S8, Galaxy Note 3, Galaxy Note 4, Galaxy Note 4 Edge, Galaxy Note 5, Galaxy Note 8, Galaxy S4,

Galaxy S5, Galaxy S7, Galaxy S7 Edge, and Galaxy S8 Plus.

For the '338 patent, the accused products are: The Samsung Galaxy S8, the Galaxy Note 3, Galaxy Note 4, Galaxy Note 4 Edge, Galaxy Note 5, Galaxy Note 8, Galaxy Note 9, Galaxy S4, Galaxy S5, Galaxy S6 Edge Plus, Galaxy S8 Plus, Galaxy S9, and Galaxy S9 Plus.

And for the '311 patent, the accused products are: The Samsung Galaxy S9, Galaxy Note 9, Galaxy Note 10, Galaxy Note 10 Plus, Galaxy S8, Galaxy S9 Plus, Galaxy S10, Galaxy S10 Plus, Galaxy S10 Plus 5G, Galaxy S20, Galaxy S20 Plus, Galaxy S20 Ultra, and the Galaxy Z Flip.

The Plaintiff, Solas, also contends that the Defendants, Samsung Display Company Ltd. and Samsung Electronics Company Ltd., have actively induced Samsung Electronics America, Inc., to infringe the asserted claims of the asserted patents.

Solas further contends that the Defendants' alleged infringement of the '311 patent has been willful. Solas seeks damages for the Defendants' alleged infringement of the '450, the '338, and the '311 patents.

The Defendants deny that they have infringed the asserted claims of the asserted patents. The Defendants contend, ladies and gentlemen, that during the terms of these patents, they did not make, use, sell, or offer for sale within the United States or import into the United

States any products that infringe any of the asserted claims of the asserted patents.

The Defendants also deny that they have induced others to infringe the asserted patents. The Defendants deny that they have willfully infringed the '311 patent. And Defendants also deny that Solas is entitled to any money damages.

The Defendants further contend that the asserted claims of the '450 patent and the '311 patent are anticipated by prior art and, therefore, that the asserted claims of the '450 patent and the '311 patent are invalid.

The Defendants also contend that the asserted claims of the '450 patent and the '311 patent are obvious in light of the prior art and, therefore, that the asserted claims of the asserted patents are invalid.

Now, the validity of the '338 patent is not at issue in this trial.

Invalidity, ladies and gentlemen, is a defense to infringement. Invalidity and infringement, however, are separate and distinct issues. Your job is to decide whether the Defendants have infringed the asserted claims and whether those claims are invalid.

If you decide that any asserted claim has been infringed and is not invalid, you will then need to decide the amount of money damages to be awarded to the Plaintiff

to compensate it for that infringement.

If you decide that there was any infringement of the '311 patent and that such infringement was willful, your decision as to willfulness should not affect any damages that you might award. I will take willfulness into account later.

Now, before you can decide many of the issues in this case, you'll need to understand the role of the patent claims.

The patent claims are the numbered sentences at the end of each patent. The claims are important because it is the words of the claims that define what a patent covers.

The figures and the text in the rest of the patent provide a description and/or examples of the invention, and they provide a context for the claims. But it is the claims that define the breadth of the patent's coverage.

Each claim is effectively treated as if it were a separate patent, and each claim may cover more or cover less than any other claim. Therefore, what a patent covers depends in turn on what each of its claims covers.

You'll first need to understand what each claim covers in order to decide whether or not there is infringement of the claim and to decide whether or not the claim is invalid.

Now, the law says that it's my role to define the terms of the claims, and it's your role to apply my definitions to the issues that you're asked to decide in this case.

Accordingly, as I've explained to you at the start of the trial, I've already determined the meaning of certain claim terms in this case, and I've provided you with those definitions or constructions as to those construed terms in your juror notebooks.

You must accept my definitions and my constructions of these words in the claims as being correct. It's your job to take these definitions and apply them to the issues that you're deciding, including the issues of infringement and invalidity.

Now, ladies and gentlemen, you should disregard any evidence presented at the trial that contradicts or is inconsistent with the constructions and the definitions that I have given you. And, again, these are in your juror notebooks.

For claim elements or limitation that is I have not construed, that is, elements or limitations that I have not interpreted or defined, you are to use and apply the plain and ordinary meaning of the element or limitation as understood by one of ordinary skill in the art, which is to say in the field of technology of the patent at the time of

08:27:40 the alleged invention.

08:27:42 The meaning of the words of the patent claims must be the same when deciding both the issue of infringement and the issue of validity.

08:27:52 As I say, you've been -- as I've already told you, rather, you've been provided with copies of each of the three asserted patents, and these are inside your juror notebooks, and you may use them and refer to them during your deliberations.

08:28:08 I'll now explain how a claim defines what it covers.

08:28:13 A claim sets forth in words a set of requirements. Each claim sets forth its requirements in a single sentence. If a device satisfies each of these requirements, then it is covered by and infringes the claim.

08:28:36 Now, there can be several claims in a patent. Each claim may be narrower or broader than another claim by setting forth more or fewer requirements. The coverage of a patent is accessed on a claim-by-claim basis.

08:28:51 In patent law, the requirements of a claim are often referred to as the claim elements or the claim limitations. When a product meets all of the requirements of a claim, the claim is said to cover that product, and that product is said to fall within the scope of that

claim.

In other words, a claim covers a product where each of the claim elements or limitations is present in that product. If a product is missing even one limitation or one element of a claim, the product is not covered by the claim. And if the product is not covered by the claim, that product does not infringe that claim.

Now, the beginning portion or preamble of a claim often uses the word comprising. The word "comprising," when used in a preamble of a claim, means including but not limited to or containing but not limited to.

When comprising is used in the preamble, if you decide that an accused product includes all of the requirements of that claim, the claim is infringed, and that is true where the accused product or instrumentality contains additional elements.

For example, a claim to a table comprising a tabletop, legs, and glue would be infringed by a table that includes a tabletop, legs, and glue, even if the table also and additionally contains other structures, such as leaves to expand the size of the tabletop or wheels to go on the ends of the legs.

Now, this case involves two types of patent claims, independent claims and dependent claims. An independent claim, ladies and gentlemen, sets forth all the

requirements that must be met in order to be covered by the claim. Thus, it's not necessary to look at any other claim in the patent to determine what an independent claim covers. It is independent.

However, on the other hand, a dependent claim does not itself recite all the requirements of the claim but refers to another claim for some of its requirements. In this way, the claim depends on another claim.

A dependent claim incorporates all the requirements of the claim to which it refers, or as we sometimes say from which it depends, and it adds its own additional requirements.

Now, to determine what a dependent claim covers, it's necessary to look at both the dependent claim itself and any other claim or claims from which it refers or from which it depends.

A product that meets all the requirements of both the dependent claim and the claim or claims to which it refers is covered by that dependent claim.

Now, if a person or a corporation makes, uses, sells, or offers to sell within the United States or imports into the United States what is covered by a patent claim without the patent owner's permission, that person or corporation is said to infringe the patent.

In reaching your decision on infringement, keep in

mind, ladies and gentlemen, that only the claims of a patent can be infringed. You must compare the asserted patent claims as I have construed them for you to the accused products and determine whether or not there is infringement. This is the only correct comparison.

You should not compare the accused products with any specific examples set out in the patent or with the prior art in reaching your decision on infringement.

In deciding infringement, the only correct comparison is between the accused products and the limitations of the asserted claims as the Court has construed any claim language.

You must reach your decision as to each assertion of infringement based on my instructions about the meaning and scope of the claims, the legal requirements for infringement, and the evidence presented to you by both sides during the course of the trial.

I'll now instruct you about the specific rules you must follow to determine whether Solas has proven that the Samsung Defendants have infringed one or more of the patent claims involved in this case.

A patent can be directly infringed even if the alleged direct infringer did not have knowledge of the patent and without the direct infringer knowing that what it was doing was infringement of the claim.

A patent may also be directly infringed even though the accused direct infringer believes in good faith that what it is doing is not infringement of the patent.

Now, in order to prove direct infringement of a patent claim, the Plaintiff, Solas, must prove by a preponderance of the evidence that the accused product includes each and every limitation of the claim.

In determining whether an accused product directly infringes a patent claim in this case, you must compare the accused product with each and every one of the requirements or limitations in that claim to determine whether the accused product contains each and every requirement or limitation recited in that claim.

A claim requirement is literally present if it exists in an accused product, just as it is described in the claim language, either as I've explained that language to you, or if I did not explain it, as it would be understood by its plain and ordinary meaning by one of ordinary skill in the art.

If an accused product omits any element recited in a claim, then you must find that that particular product does not infringe that claim.

Now, you must decide separately and for each asserted claim whether or not there is infringement. However, if you find that an independent claim on which

other claims depend is not infringed, there cannot be infringement of any dependent claim that refers or depends directly or indirectly from that independent claim.

On the other hand, if you find that an independent claim has been infringed, you must still decide separately whether the product meets the additional requirements of any claim that depends from or refers to that independent claim, thus whether those dependent claims have also been infringed.

As I've said, a dependent claim includes all the requirements of any of the claims to which it refers or depends, plus the additional requirements set forth in the dependent claim itself.

Now, the -- Solas, the Plaintiff, alleges that Samsung Display Company Limited, also referred to as SDC, and Samsung Electronics Company Limited, also referred to as SEC, are liable for infringement for actively inducing Samsung Electronics America, Inc., also known as SEA, to directly infringe the asserted patents.

As with direct infringement, ladies and gentlemen, you must determine whether there has been active inducement on a claim-by-claim basis.

SDC and SEC are liable for active inducement of a claim only if Solas proves by a preponderance of the evidence that:

08:37:15 1 1. The alleged infringing acts were actually
08:37:19 2 carried out by SEA and directly infringe that claim.
08:37:22 3 2. SDC and SEC took action during the time the
08:37:28 4 asserted patents were in force intending to cause
08:37:31 5 infringing acts by SEA.
08:37:34 6 And 3. SDC and SEA were aware of the asserted
08:37:41 7 patents and knew that the acts, if taken, would constitute
08:37:45 8 infringement of those patents, or believed there was a high
08:37:49 9 probability the acts, if taken, would constitute
08:37:54 10 infringement of the asserted patents but deliberately
08:37:57 11 avoided confirming that belief, that is to say that SDC and
08:38:02 12 SEA believed there was a high probability that the acts, if
08:38:05 13 taken, would constitute infringement but were willfully
08:38:10 14 blind to that fact.
08:38:10 15 In order to establish active inducement of
08:38:15 16 infringement, it's not sufficient that SEA directly
08:38:18 17 infringes the claim, nor is it sufficient that the
08:38:21 18 Defendants were aware of the acts of SEA that allegedly
08:38:26 19 constitute direct infringement.
08:38:27 20 -- now, in this case, the Plaintiff, Solas, also
08:38:32 21 contends that the Samsung Defendants have willfully
08:38:36 22 infringed the asserted claims of the '311 patent --
08:38:41 23 If you decide that the Defendants have infringed a
08:38:43 24 valid claim of the '311 patent, you must go on and address
08:38:48 25 the additional issue of whether or not that infringement

was willful.

Solas must prove willfulness by a preponderance of the evidence.

You may not determine that the infringement was willful just because one of the Defendants knew of an asserted patent and infringement -- and infringed it.

However, you may find that a particular Defendant willfully infringed if you find that the Defendants' behavior was malicious, wanton, deliberate, consciously wrongful, flagrant, or in bad faith.

To determine whether a Defendant acted willfully, consider all facts and assess the Defendants' knowledge at the time of the challenged conduct. Facts that may be considered include whether or not the Defendant reasonably believed that it did not infringe or that the asserted patents were invalid.

You may find that a Defendant's actions were egregious or wanton if the Defendant acted in reckless disregard of or with deliberate indifference to Solas's patent rights or if the Defendant was willfully blind to Solas's patent rights.

Your determination, ladies and gentlemen, of willfulness as to the '311 patent should incorporate the totality of the circumstances based on the evidence presented during the trial.

Willfulness can be established by circumstantial evidence. Knowledge of the existence of a patent can be relevant to the question of willful infringement.

If you decide that any infringement was willful, that decision should not affect any damages award that you give. I will take willfulness into account later if you find it.

I'll now instruct you on the rules that you must follow in deciding whether or not the Defendants have proven that the asserted claims of the asserted patents are invalid.

An issued United States patent is accorded a presumption of validity based on the presumption that the United States Patent and Trademark Office, which you've heard referred to throughout the trial as the PTO or sometimes simply called the Patent Office, that it acted correctly in issuing the patent. This presumption of validity, ladies and gentlemen, extends to all issued United States patents.

Now, in order to overcome this presumption, the Defendants must establish by clear and convincing evidence that the claim is invalid. Like infringement, invalidity is determined on a claim-by-claim basis.

You must determine separately for each claim whether that claim is invalid. If one claim of a patent is

invalid, that does not mean that any other claim is necessarily invalid.

Claims are construed in the same way for determining infringement as for determining invalidity. You must apply the claim language consistently and in the same manner for issues of infringement and for issues of invalidity. And in making your determination as to invalidity, you should consider each claim separately.

Now, in patent law, a previous device, system, method, publication or patent that predates the claimed invention is generally called prior art or a prior art reference.

Prior art may include items that were publicly known or have been used or offered for sale or references such as publications or patents that disclose the claimed invention or elements of the claimed invention.

To be prior art, an item or reference must have been made, known, used, sold, offered for sale, published, or patented before the date of the invention or more than one year before the filing of the patent application to which the patent claims priority.

However, ladies and gentlemen, prior art does not include a publication that describes the inventor's own work and was published less than one year before the date of the invention.

08:43:21 Now, in evaluating the prior art to determine
08:43:23 whether an invalidity defense has been proved by clear and
08:43:26 convincing evidence, you may consider whether that prior
08:43:31 art was or was not before the Patent Office.
08:43:37 The priority dates of the '450 patent, the '338
08:43:42 patent, and the '311 patent are as follows: November the
08:43:45 28th, 1996, for the '450 patent and September the 29th,
08:43:51 2004, for the '338 patent.
08:43:55 For the '311 patent, Solas and Samsung disagree on
08:44:02 the priority date. Samsung contends that the priority date
08:44:06 is August 28th, 2011. Solas contends that the priority
08:44:09 date is no earlier than January of 2011.
08:44:13 I will now explain to you how to determine the
08:44:18 priority date for the '311 patent.
08:44:21 There are two parts of making an invention. One
08:44:24 is conception, the other is reduction to practice. First,
08:44:31 the inventor has the idea of the invention. This is
08:44:34 referred to as the conception of the invention.
08:44:37 Conception is the mental part of the inventive
08:44:41 act, that is to say, the formation in the mind of the
08:44:44 inventor of a definite and permanent idea of the complete
08:44:47 and operative invention as it is thereafter to be applied
08:44:51 in practice, even if the inventor did not know at the time
08:44:56 that the invention would actually work.
08:44:57 Conception of the invention is complete when the

idea is so clearly defined in the inventor's mind that if the idea were communicated to a person having ordinary skill in the field of the technology, he or she would be able to reduce the invention to practice without undue research or experimentation.

Secondly, the invention must have been reduced to practice. A reduction to practice can take one of two forms, actual reduction to practice or constructive reduction to practice.

The actual making of the invention is referred to as actual reduction to practice. An invention is said to be actually reduced to practice when it's made and shown to work for its intended purpose.

The actual reduction to practice of a claim must include all the limitations recited by the claim. The invention must have been sufficiently tested to demonstrate that it will work for its intended purpose.

Now, absent proof of actual reduction to practice, the date of reduction to practice is the date that the patent application was filed. This is referred to as the constructive reduction to practice date.

In the case of the '311 patent, the patent application was filed on October the 28th, 2011. Ordinarily, a reference dated before the patent application filing date is prior art to the patent claims.

08:46:40 There are two, however, circumstances under which
08:46:42 a reference dated before the application filing date would
08:46:46 not be prior art.
08:46:50 The first occurs when the inventor on the patent
08:46:53 actually reduced the invention to practice before the date
08:46:56 of the reference. A reference dated after the actual
08:47:00 reduction to practice date is not prior art as to the
08:47:04 patent claims.
08:47:04 The second circumstance under which a reference
08:47:14 dated before the application filing date is not prior art
08:47:18 occurs when the inventor conceived of the invention before
08:47:21 the date of the prior art and exercised reasonable
08:47:24 diligence from just before the date of the reference up to
08:47:28 the date of the inventor's actual reduction to practice.
08:47:31 In that case -- or in that case, a reference date
08:47:35 after the conception date would not be prior art as to the
08:47:39 patent claims.
08:47:40 Now, reasonable diligence means that the inventor
08:47:44 worked continuously on reducing the invention to practice.
08:47:49 Merely asserting diligence is not enough. A party must
08:47:53 account for the entire period during which diligence is
08:47:56 required.
08:47:56 However, interruptions necessitated by every day
08:48:01 problems or obligations of the inventor or others working
08:48:04 with him or her do not prevent a finding of diligence.

A party may seek to establish that the date of the invention of a patent is earlier than the filing date of the application of the patent. That party may seek to establish the date of invention through the testimony of the inventors of the patent, documents, and physical evidence.

Circumstantial evidence of an independent nature, as well as testimony from someone other than the inventors, may also be considered. An inventor's own testimony regarding conception and reduction to practice of the claimed invention must be sufficiently corroborated by independent evidence.

In deciding whether the inventor's testimony has been sufficiently corroborated, you must evaluate all pertinent evidence. Reliable evidence of corroboration preferably comes in the form of records made contemporaneously with the inventive and reduction to practice process.

You must decide what prior art would have disclosed or taught to one of ordinary skill in the field of the technology of the patent at the date of the invention.

In order for someone to be entitled to a patent, the invention must actually be new and the inventor must not have lost his or her rights by delaying the filing of

an application claiming the invention.

In general, inventions are new when the identical apparatus, system, or method has not been made, used, or disclosed before.

Samsung contends that the asserted claims of the '450 patent and the '311 patent are invalid because the claimed inventions are not new. In other words, Samsung contends that the '450 patent and the '311 patents are anticipated by prior art.

Anticipation, ladies and gentlemen, requires that all the requirements of a patent claim must be disclosed in a single prior art reference. Also, the single prior art reference must disclose all of the elements of the claim arranged and combined in the same way as the claim -- in that claim as the claim has been construed or interpreted by the Court.

Samsung must prove by clear and convincing evidence that an asserted claim was anticipated by the prior art reference. Anticipation must be determined on a claim-by-claim basis.

Now, for the claim to be invalid because it is not new, Defendants must show by clear and convincing evidence that all of the requirements of the claim were present in a single previous device or method that was known of, used, or described in a single previous printed publication or

patent. We call these things anticipating prior art.

To anticipate the invention, the prior art does not have to use the same words as the claim, but all the requirement of the claim must have been disclosed, either stated expressly or implied to a person having ordinary skill in the art in the technology of the invention, so that looking at that one reference, that person of ordinary skill could make or use the claimed invention.

An item of prior art may anticipate without expressly disclosing a feature of the claimed invention if that missing characteristic is necessarily present or inherent in the single anticipating reference.

Prior art may include items that were publicly known or that have been used or offered for sale or references, such as publications or patents, that disclose the claimed invention or elements of the claimed invention.

To be prior art, the item or reference must have been made, known, used, published or patented either before the invention was made -- before the invention was made or more than one year before the filing date of the patent application.

However, prior art does not include a publication that describes the inventor's own work and was published less than one year before the date of the invention.

Now, in determining whether or not the invention

is valid, you must determine the scope and content of the prior art reference at the time the invention was made.

For prior art to anticipate a claim of a patent, the disclosure of the single prior art reference does not have to be in the same words as the claims, but all the elements of the claim must be there, either stated or necessarily implied so that someone of ordinary skill in the field of the invention looking at that single prior art reference would be able to make and use at least one embodiment of the claimed invention.

Now, the Defendants also contend that all asserted claims of the '311 and '450 patent are invalid as being obvious. Even though an invention may not have been identically disclosed or identically described in a single prior art reference before it was made by an inventor, in order to be patentable, the invention must also not have been obvious to a person of ordinary skill in the field of the technology of the patent at the time the invention was made.

The Defendants in this case have the burden of establishing obviousness by showing by clear and convincing evidence that the claimed invention would have been obvious to persons having ordinary skill in the art at the time the invention was made in the field of the technology of the patent.

Now, in determining whether the claimed invention was obvious, you must consider the level of ordinary skill in the field that someone would have had at the time the invention was made, the scope and content of the prior art, and any differences between the prior art and the claimed invention.

You should keep in mind, ladies and gentlemen, that the existence of each and every element of the claimed invention in the prior art does not necessarily prove obviousness.

Most, if not all, inventions rely on the building blocks of prior art. The skill of the actual inventor is not necessarily relevant because inventors may possess something that distinguishes them from persons having ordinary skill in the art.

Additionally, teachings, suggestions, and motivations may also be found within the knowledge of persons -- of a person of ordinary skill in the art, including inferences and creative steps that a person of ordinary skill in the art would employ.

A person of ordinary skill may be able to fit the teachings of multiple pieces of prior art together like a puzzle. The person of ordinary skill in the art would have the capability of understanding the scientific and engineering principles applicable to the pertinent art.

In considering whether a claimed invention is obvious, you may but you are not required to find obviousness if you find at the time of the claimed invention there was a reason that would have prompted a person having ordinary skill in the field to combine the known elements in a way the claimed invention does, taking into account such factors as:

1. Whether the claimed invention was merely the predictable result of using prior art elements according to their known function;

2. Whether the claimed invention provides an obvious solution to a known problem in the relevant field;

3. Whether the prior art teaches or suggests to the desirability of combining elements in the claimed invention;

4. Whether the prior art teaches away from combining elements in the claimed invention;

5. Whether it would have been obvious to try the combination of elements in the claimed invention, such as when there is a design need or market pressure to solve a problem, and there are a finite number of identified predictable solutions; and

6. Whether the change resulted more from design incentives or other market forces.

To find it rendered the invention obvious, you

must find that the prior art provided a reasonable expectation of success. Obvious to try is not sufficient in unpredictable technologies.

In determining whether the claimed invention was obvious, consider each claim separately. Do not use hindsight. Consider only what was known at the time of the invention.

In other words, you should not consider what a person of ordinary skill in the art would know now or what has been learned by the teachings of the patents-in-suit.

In making these assessments, ladies and gentlemen, you should take into account any objective evidence, sometimes called secondary considerations, that may have existed at the time of the invention and afterwards that shed light on the obviousness or not of the claimed invention.

The following are possible secondary considerations, but it's up to you to decide whether secondary considerations of non-obviousness exist at all:

1. Whether the invention was commercially successful as the result of the merits of the claimed inventions rather than the result of design needs or market pressure, advertising, or similar activities;

2. Whether the invention satisfied a long-felt need;

08:58:50 1 3. Whether the inventor proceeded contrary to
08:58:55 2 accepted wisdom in the field;
08:58:57 3 4. Whether others tried but failed to solve the
08:59:01 4 problem solved by the claimed invention;
08:59:02 5 5. Whether others invented the invention at
08:59:07 6 roughly the same time;
08:59:08 7 6. Whether others copied the claimed invention;
08:59:12 8 7. Whether others accepted licenses under the
08:59:17 9 patents-in-suit because of the merits of the claimed
08:59:19 10 invention;
08:59:20 11 8. Whether the claimed invention achieved
08:59:25 12 unexpected results;
08:59:26 13 9. Whether others in the field praised the
08:59:31 14 claimed invention;
08:59:32 15 10. Whether there were changes or related
08:59:36 16 technologies or market needs contemporaneous with the
08:59:40 17 invention; and
08:59:45 18 11. Whether persons having ordinary skill in the
08:59:48 19 art in the invention expressed surprise or disbelief
08:59:51 20 regarding the invention.
08:59:52 21 These factors are relevant only if there was a
08:59:54 22 connection or a nexus between the factors and what
08:59:58 23 differentiates the claimed invention from the prior art.
09:00:02 24 Solas, the Plaintiff, has the burden of
09:00:05 25 establishing this connection or nexus.

09:00:10 Moreover, even if you conclude that some of the
09:00:11 above indicators of objective evidence have been
09:00:15 established, those factors should be considered along with
09:00:19 all the other evidence in the case determining whether the
09:00:23 Defendants have proven that the claimed invention would
09:00:26 have been obvious.
09:00:27 In support of obviousness, you may also consider
09:00:33 whether others independently invented the claimed invention
09:00:37 before or at about the same time as the named inventor
09:00:42 thought of it.
09:00:43 In making these determinations, a person of
09:00:48 ordinary skill uses simple common sense and can rely upon
09:00:48 the inferences and creative steps that a person of ordinary
09:00:55 skill in the art would employ.
09:00:55 Also, the Defendants do not need to show that one
09:00:58 of ordinary skill would actually have combined the physical
09:01:03 structures of two references. One need only combine the
09:01:07 teachings.
09:01:08 Remember, as stated above, the prior art is not
09:01:11 limited to patents and published materials but includes the
09:01:16 general knowledge that would have been available to one of
09:01:19 ordinary skill in the field of the invention.
09:01:21 If you find the Defendants have proven the
09:01:24 obviousness of a claim by clear and convincing evidence,
09:01:28 then you must find that that claim is invalid.

09:01:31 Now, several times in these instructions, ladies
09:01:37 and gentlemen, I refer to a person of ordinary skill in the
09:01:40 field of the invention. It's up to you to decide the level
09:01:44 of ordinary skill in the field of technology of the patent
09:01:48 and what it is.
09:01:50 In deciding this, you should consider all the
09:01:53 evidence introduced at trial, including but not limited to:
09:01:58 1. The levels of education and experience of
09:02:02 persons working in the field;
09:02:03 2. The types of problems encountered in the
09:02:07 field;
09:02:08 3. Prior art solutions to those problems;
09:02:11 4. The rapidity of which innovations are made;
09:02:19 and
09:02:19 5. The sophistication of the technology.
09:02:22 A person of ordinary skill in the art is a
09:02:27 hypothetical person who is presumed to have known all of
09:02:30 the relevant prior art at the time of the claimed
09:02:36 invention.
09:02:36 In this case, a person of ordinary skill in the
09:02:38 art for the '450 and the '338 patents would have at least a
09:02:45 bachelor's degree in electrical engineering and/or
09:02:48 materials science and engineering or equivalent training
09:02:51 and approximately two years of experience working in design
09:02:54 and development related to the Active Matrix OLED Displays.

09:03:01 For the '311 patent, a person of ordinary skill in
09:03:05 the art would have at least a bachelor's degree in
09:03:08 electrical engineering or mechanical engineering or
09:03:11 equivalent training and approximately two years experience
09:03:13 working in design and development related to capacitive
09:03:19 touch sensors.
09:03:19 In considering whether the claimed invention was
09:03:26 obvious, you should first decide the scope and content of
09:03:29 the prior art. The scope and content of the prior art for
09:03:33 deciding whether the invention was obvious includes at
09:03:37 least prior art in the same field as the claimed invention.
09:03:42 It also includes prior art from different fields
09:03:46 that a person of ordinary skill in the art would have
09:03:48 considered when trying to solve the problem that is
09:03:51 addressed by the invention.
09:03:54 If you find that the Defendants infringed any
09:03:58 valid claim of the asserted patents, you must then consider
09:04:03 what amount of damages to award to the Plaintiff.
09:04:07 If you do not find infringement by the Defendants
09:04:10 or you find that all the infringed claims are invalid, you
09:04:15 will not consider patent damages at all.
09:04:17 However, remember, in this case, one of the three
09:04:21 patents is not challenged by the Defendants as to
09:04:24 invalidity.
09:04:24 Now, I will now instruct you on the measure of

damages. By instructing you on damages, ladies and gentlemen, I'm not suggesting which party should win this case on any issue.

If you find that the Defendants have not infringed any valid claim of the patents-in-suit, then Solas is not entitled to any money damages.

The damages you award must be adequate to compensate Solas for any infringement you may find. You may not award Solas more damages than are adequate to compensate for the infringement. You must not include any additional amount for purposes of punishing the Defendants or setting an example.

The patent laws specifically provide that damages for infringement may not be less than a reasonable royalty. Solas, the Plaintiff, has the burden to establish the amount of its damages by a preponderance of the evidence.

In other words, you should award only those damages that Solas establishes as more likely than not that it suffered.

Solas seeks damages in the form of a reasonable royalty. A reasonable royalty is defined as the money amount the parties would have agreed upon for the Defendants to use the asserted patents at the time the infringement began.

The determination, ladies and gentlemen, of a

damages award is not an exact science, and the amount need not be proven with unerring precision. You may approximate, if necessary.

Now, while the Plaintiff is not required to prove the amount of its damages with mathematical precision, it must prove them with reasonable certainty, and you may not award damages that are speculative.

If you find that Solas has established patent infringement and the Defendants have not established patent invalidity, Solas is entitled to at least a reasonable royalty to compensate it for that infringement.

A royalty is a payment made to a patent holder in exchange for the right to make, use, sell, or import a claimed invention.

A reasonable royalty is the royalty payment that a patent owner and an alleged infringer would have agreed to in a hypothetical negotiation taking place at a time prior to when the infringement first began.

In considering this hypothetical negotiation, you should focus on what the expectations of the patentholder and the alleged infringer would have been had they entered into an agreement at that time and had they been acting reasonably in their negotiations.

In determining this, you must assume both parties believed the patents-in-suit were valid and infringed and

that both parties were willing to enter into an agreement.

The reasonable royalty you determine must be -- must be a royalty that would have resulted from the hypothetical negotiation and not simply a royalty that either party would have preferred.

Evidence of things that happened after infringement first began can be considered in evaluating the reasonable royalty only to the extent that the evidence aids in assessing what royalty would have resulted from the hypothetical negotiation.

The law requires that any damages awarded to Solas correspond to the value of the alleged inventions within the accused products as distinct from other unpatented features of the accused product or other factors, such as marketing or advertising or Defendants' size or market position.

This is particularly true where the accused product has multiple features and multiple components not covered by the patent or where the accused product works in conjunction with other non-patented items.

The amount you find as damages must be based on the value attributable to the patented technology as distinct from other unpatented features of the accused product.

If the unpatented features contribute to an

accused product, you must apportion that value to exclude any valuable -- value attributable to unpatented features.

You must determine an appropriate royalty rate and an appropriate royalty base that reflect the value attributable to the patented invention alone.

Solas bears the burden to establish the amounts attributable to the patented features.

A reasonable royalty, if any, may be calculated as either a running royalty, which represents a string of payments over time determined by multiplying a royalty rate times a royalty base, or in the alternative, a reasonable royalty may be calculated as a one-time, lump sum payment.

If you find that Solas is entitled to damages, you must decide, ladies and gentlemen, whether the parties would have agreed to a running royalty or a fully paid-up lump sum royalty at the time of the hypothetical negotiation.

If you decide that a running royalty is appropriate, then the damages you award, if any, should reflect the total amount necessary to compensate Solas for Defendants' past infringement.

However, the lump sum royalty is when the infringer pays a single price for a license covering both past and future infringing sales.

If you decide that a lump sum is appropriate, then

09:10:28 the damages you award, if any, should reflect the total
09:10:32 amount necessary to compensate Solas for Defendants' past
09:10:37 and future infringement.
09:10:40 You should select the method of calculating a
09:10:43 reasonable royalty in this case that you believe is
09:10:46 appropriate considering all the evidence that's been
09:10:50 presented to you during the course of the trial.
09:10:52 In determining the reasonable royalty, you should
09:10:57 consider all the facts known and available to the parties
09:11:00 at the time the infringement began.
09:11:03 The parties to this hypothetical negotiation are
09:11:06 the owner of the patent at the time the infringement began
09:11:10 and the Defendants. Some of the kinds of factors that you
09:11:15 may consider in making your determination are as follows:
09:11:21 1. The royalties received by the patentee for
09:11:25 licensing of the patents-in-suit proving or tending to
09:11:27 prove an established royalty.
09:11:28 2. The rates paid by the licensee for the use of
09:11:32 other patents comparable to the patents-in-suit.
09:11:37 Comparable license agreements include those covering the
09:11:41 use of the claimed invention or similar technology.
09:11:44 3. The nature and scope of the license as
09:11:46 exclusive or non-exclusive or as restricted or
09:11:50 non-restricted in terms of territory or with respect to
09:11:55 whom the manufactured products may be sold.

4. The licensor's established policy and marketing program to maintain his or her patent exclusivity by not licensing others to use the invention or by granting licenses under special positions designed to preserve that exclusivity.

5. The commercial relationship between the licensor and licensee, such as whether or not they are competitors in the same territory, in the same line of business or whether they are inventor and promoter.

6. The effect of selling the patented specialty in promoting sales of other products of the licensee, the existing value of the invention to the licensor as a generator of sales of his non-patented -- his or her non-patented items and the extent of such derivative or convoyed sales.

7. The duration of the patent and the term of the license.

8. The established profitability of the product made under the patents, its commercial success, and its current popularity.

9. The utility and advantages of the patented invention over the old modes or devices that had been used for achieving similar results.

10. The nature of the patented invention, the character of the commercial embodiment of it as owned and

produced by the licensor and the benefits of those who have used the invention.

11. The extent to which the infringer has made use of the invention and any evidence probative of the value of that use.

12. The portion of the profit or selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or analogous inventions.

13. The portion of the realizable profits that should be credited to the invention as distinguished from non-patented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer.

14. The testimony and opinions of qualified experts.

15. The amount that a licensor, such as the patentee, and a licensee, such as the infringer, would have agreed upon at the time the infringement began if both had been reasonably and voluntarily trying to reach an agreement, that is, the amount which a prudent licensee who desired as a business proposition to obtain a license to manufacture and sell a particular article embodying the patented invention would have been willing to pay as a royalty and yet be able to make a reasonable profit which

amount would have been acceptable to a prudent patentee who was willing to grant a license.

Now, none of these factors, ladies and gentlemen, are dispositive, and you can and you should consider the evidence that's been presented to you in this case on each of these factors.

You may have heard these factors referred to during the trial as the Georgia-Pacific factors. You may consider any other factors that in your minds would have increased or decreased the royalty the infringer would have been willing to pay, and the patent owner would have been willing to accept acting as normally prudent business people.

Now, when determining a reasonable royalty, you may consider evidence concerning the amounts that other parties have paid for rights to the patent in question or for rights to similar technologies.

Thus comparable license agreements are one factor that may inform your decision as to the proper amount and form of the reasonable royalty award, similar to the way in which the value of a house is determined relative to comparable houses sold in the same neighborhood.

Such licenses may indicate the patented inventions' economic value in the marketplace, and they may indicate the proper form of the royalty structure, such as

a lump sum, or a running royalty.

A license agreement need not be perfectly comparable to a hypothetical license that would be negotiated between the patent owner and alleged infringer in order for you to consider it.

However, if you choose to rely upon evidence from any other license agreements, you must account for any differences between those licenses and the hypothetically negotiated license in terms of the technologies and economic circumstances of the contracting parties when you make your reasonable royalty determination.

Now, for purposes of determining a reasonable royalty, you may consider whether at the time of the hypothetical negotiation Defendants had acceptable, non-infringing alternatives to taking a license.

To be an acceptable, non-infringing alternative, a product must have the advantages of the patented invention that were important to the purchasers of the infringing product and the relevant components thereof.

Defendants bear the burden of proof to show that any non-infringing, acceptable alternative was available at the time of the hypothetical negotiation.

In determining the amount of damages, you must determine when the damages began. Where you find that an asserted claim is both infringed and not invalid, you may

not award any damages for activities occurring before the damages start.

A patentee is not entitled to damages for any infringement committed more than six years prior to the filing of the claim for infringement.

The parties in this case agree that the damages period for the '450 patent and the '338 patent would have begun on August 23rd, 2013.

A patentee is not entitled to damages after the expiration of an asserted patent. The '450 patent expired on November the 21st, 2017. So the damages period for the '450 patent would have ended on November the 21st, 2017.

Now, with those instructions, ladies and gentlemen, we're ready to hear closing arguments from the attorneys in the case.

Plaintiff, you may now present your first closing argument. Would you like a warning on your time?

MR. FENSTER: No, Your Honor. I'll watch the clock. Thank you.

THE COURT: All right. Then you may proceed, Mr. Fenster.

Please proceed.

MR. FENSTER: Good morning, ladies and gentlemen.

And may it please the Court.

On behalf of Solas, I want to start by thanking

09:20:11 you for the sacrifices that you've made throughout this
09:20:15 week, especially in these times, and for the diligence and
09:20:19 attention that you've paid throughout this week and last.
09:20:21 As you've heard, this case is about Solas's
09:20:28 constitutionally-protected patent rights and Samsung's use
09:20:34 of these inventions without permission.
09:20:36 This trial, though, like all trials, is about
09:20:44 credibility, credibility of the parties and of the
09:20:48 witnesses.
09:20:49 As Judge Gilstrap just instructed you, you are the
09:20:54 sole judge of the credibility of the parties and the
09:20:59 witnesses in this case. It's because of your collective
09:21:04 wisdom.
09:21:05 We presented Mr. Padian, who told you about Solas
09:21:10 and the investment they've made in the patents. He told
09:21:14 you about their efforts to license those patents and their
09:21:19 recent success in getting a license -- in licensing the
09:21:24 patents to LG, Samsung's competitor.
09:21:27 We can't say this in open court, but you remember
09:21:30 that large sum of money.
09:21:34 And, ladies and gentlemen, I submit to you that
09:21:38 when Samsung's competitor paid such a large sum of money
09:21:43 for the license to Solas's patents, that that tells you
09:21:49 something about the credibility of Mr. Padian and about
09:21:52 Solas.

09:21:52 Now, there's a reason why highly technical patent
09:21:59 cases like this are submitted to jurors. It's because they
09:22:03 come down to weighing the credibility of expert witnesses.
09:22:11 And you, the jury, are uniquely qualified to do so because
09:22:15 of your collective life experience.
09:22:19 In this case, the issues of infringement and
09:22:21 validity with respect to the '450 and '338 patents come
09:22:26 down to your assessment of the credibility of Mr. Tom
09:22:30 Credelle, who we presented, and that of Dr. Fontecchio,
09:22:33 presented by Mr. -- by Samsung.
09:22:35 Mr. Credelle was -- he showed you his hard work.
09:22:45 He did the hard work to show you infringement, took you
09:22:48 through the evidence, element-by-element, of every one of
09:22:51 those asserted claims. He was clear, forthcoming,
09:22:56 consistent on the stand. He didn't hold anything back from
09:22:58 you. He gave you the whole story right upfront.
09:23:02 Now, I want to talk to you a minute about
09:23:06 cross-examination.
09:23:08 The purpose of cross-examination is to test the
09:23:12 testimony to see if it holds up under scrutiny. Anyone can
09:23:19 come in and just say something, but it's only under the
09:23:22 bright light of cross-examination that you can test whether
09:23:26 or not that testimony holds up.
09:23:27 In fact, cross-examination is so important that
09:23:30 you are not allowed to consider testimony that was not

presented to you under oath and subject to cross-examination.

So how did Mr. Credelle do on cross-examination? He was rock solid. He was the same straight-shooter on cross as he was on direct. In fact, Mr. Haslam, who's a very experienced advocate, couldn't come up -- he struggled to come up with a line of attack. And ultimately, he gave up in the middle of the cross-examination.

It was pretty unusual.

On the other side, Samsung presented Dr. Fontecchio. Dr. Fontecchio, I have to admit, he sounded pretty good on direct, didn't he? But what happened on cross-examination? His demeanor changed. He was no longer affable and forthcoming and direct. He was repeatedly impeached. He admitted to changing his testimony. He admitted that he didn't show you important information. He showed you part of the story, but I had kept getting to admit that he didn't show you this and he didn't show you that.

He admitted that his infringement opinions were based on importing limitations into the claims, just after admitting that it's absolutely improper to do so.

Ladies and gentlemen, I submit to you that the difference between Mr. Credelle and Dr. Fontecchio highlights the difference between real-world experience,

where Mr. Credelle learned to back up his opinions, and that of a -- and that of a college professor, who is used to standing up in front of a kid -- in front of kids who don't push back, they don't test him.

On the '311 patent, this comes down to Mr. Credelle versus Dr. Sierros.

All of the issues regarding the '311 come down to that credibility assessment. Dr. Sierros is clearly very smart, but Samsung put him in a terrible position.

Ladies and gentlemen, Samsung took advantage of a young professor, they fed him positions that he didn't fully believe, put him on the stand to testify under oath. We all remember the exchange that's on your slide before you.

At best, Dr. Sierros was confused. At worst -- at worst, Samsung was just using him as a mouthpiece to try to invalidate Mr. Shaikh's patent and Solas's constitutionally-protected patent.

I submit to you that Mr. Credelle's credibility stands in stark contrast to that of the young professor on the positions that Samsung asked him to testify about.

I'd like to start with the '311 patent.

So the '311 patent was Mr. Shaikh is the -- is the one that Mr. Shaikh testified about. This is the one with flexible -- with the metal mesh sensor, flexible substrate,

wrap around the edge.

Mr. Shaikh testified about his big idea in January 2011, that he came up with the idea to get rid of the border altogether, to extend the sensor across the display so you didn't have to have that border hiding the connections. He testified what that patent meant to him, that this was his Ph.D.

And we showed you infringement. Mr. Credelle walked you through step-by-step showing you every single element, backing it up with evidence.

This shows the three key elements of the claim. There was the metal mesh touch sensor, the flexible substrate, and wrap around the edge. And we've already talked about these, and I don't have time to go through all of it, but I'll talk about a few.

One is whether the TFE is a sub- -- a flexible substrate. We showed you that the touch sensor is built on a substrate. That substrate is TFE. Samsung denies it.

They try it say it's part of the display. The evidence, though, was overwhelming that the TFE is, in fact, a substrate. All of these witnesses and Samsung's own document confirm it.

First, PTX-123, this is the confidential document from Samsung that shows their sensor process. It's not the display. It's the sensor process, and it starts with the

09:28:34 TFE. The TFE is the substrate. Their own documents show
09:28:38 that it is so.
09:28:39 Mr. Credelle testified that the metal mesh is
09:28:44 formed on a substrate called TFE. Mr. Kwak, their witness,
09:28:49 came and testified that TFE may serve as the substrate.
09:28:53 There is no question that we met this element in the burden
09:28:57 of proof.
09:28:57 Now, the next issue is wrap around. So we have to
09:29:04 show that the flexible substrate -- that the sensor on the
09:29:07 flexible substrate is configured to wrap around the edge,
09:29:10 which is the intersection between a flat surface and a
09:29:13 curved surface.
09:29:14 And Mr. Credelle walked you through all that
09:29:17 analysis, and you remember that in evidence.
09:29:19 So, ladies and gentlemen, we think that we've
09:29:23 presented our evidence to you and met every one of our
09:29:26 elements for the '311 patent and ask you to find
09:29:30 infringement.
09:29:30 There's a second issue, though, with respect to
09:29:33 the '311 patent that I talked to you about in opening, and
09:29:36 that is that we believe that Samsung's infringement of the
09:29:41 '311 patent was willful.
09:29:41 So Mr. Shaikh told you that they came up with the
09:29:51 idea in January of 2011. The three core elements of their
09:29:55 invention was metal mesh, flexible substrate, wrap around

an edge.

He testified that over the next six months, they diligently built a working prototype, the Jolle project, which they shipped working units of in July -- on July 8th, 2011.

They then filed a patent, and that patent covered the essential elements, those core three elements, metal mesh, flexible substrate, wrap around an edge.

The embodiment that they had built, Atmel, did use copper wires, and it used PET, and those were the embodiments, an example. Atmel was trying to sell sensors, and they happened to use that in their embodiment.

But the claims covered everything above the line, and I've drawn that line because it's important. Everything above the line matters. Everything below the line does not.

The judge has been telling you throughout trial, it's the claims, it's the claims, it's the claims, not the embodiments.

So then we saw evidence that Atmel disclosed their invention throughout 2011, 2012, all the way through 2016. Why did they do that? Because Atmel was trying to sell sensors to Samsung Display. This evidence was unrebutted. Samsung did not provide anyone with personal knowledge to say they did not get this information.

And one of those documents was PTX-650, which Mr. Shaikh testified about. And Mr. Shaikh showed them, showed Samsung, what could happen if you -- with a flexible sensor on a flexible substrate that you wrap around the edge. You can get rid of the border altogether. He called it "zero border." He called it "edge to edge." But he showed this to Samsung.

He testified that he was concerned about disclosing his invention to Samsung, that it might leak out, but that he was genuinely -- he genuinely believed that Samsung was interested in buying sensors.

We learned later, through Mr. Kwak in this trial, that they had no intention of buying sensors from Atmel at all, but they led Atmel to believe that they did. Why? So that they would continue to disclose their invention over those years. And they did.

Throughout 2016, we saw unrebutted evidence that Atmel made presentation after presentation. Then the patent issues on February 2016. And then Samsung finds out about the patent.

PTX-103, we showed you unrebutted evidence and they admitted that they had the patent in March 2016.

And then they came up with their first infringing product, the S8 in 2017. And what were the features of that? It had a metal mesh sensor, it had a flexible

09:33:12 substrate that wrapped around the edge.

09:33:13 Now, it happened to also use aluminum titanium

09:33:21 wires and a TFE substrate. But look at what they took.

09:33:26 Out of the things on the left, what did they take? Only

09:33:29 the invention. They didn't want the embodiment. They only

09:33:32 took what mattered, Mr. Shaikh's patent, the patented

09:33:39 invention.

09:33:39 Their response is to try to distract you. Well,

09:33:43 we didn't take it because we didn't take the copper, we

09:33:46 didn't take the PAT -- PET. That is all stuff below the

09:33:50 line, stuff that doesn't matter. All they took was the

09:33:53 invention. And why? Because it is these essential

09:33:57 elements that Mr. Shaikh said give them the zero border,

09:34:01 edge to edge display, and that is exactly what Mr. Repice,

09:34:06 from Samsung, said gives Samsung its signature infinity

09:34:12 display.

09:34:12 That's what they took.

09:34:14 Now, they deny it. They say, well, we didn't take

09:34:19 it from Atmel. Okay. So let's see what the evidence

09:34:25 showed. And here I'm going to point you to a lack of

09:34:28 evidence. Samsung is the most innovative Mobile Display

09:34:33 Company in the world. They told you so.

09:34:35 Samsung is a company of tens of thousands of

09:34:39 inventors. They told you so.

09:34:41 If they had come up with this idea of wrapping

around an edge using metal mesh -- metal mesh to wrap around an edge and get rid of the border altogether, they would be holding it up screaming at the top of their lungs, we had it first.

No. Absolute silence. They did not bring a single witness here, did not show you a single document to show you that they had that idea first. Thousands of engineers, thousands of inventors. They were working on substrates. They were working on OLED. They were working in this space. And it wasn't until Mr. Shaikh walked into their office and showed them the '650 [sic] and what it could do that they got that idea.

Now, once they got that idea, they used it continuously. The S8 was the first, and they have continued to use it. And this is important, they will continue to use it. The '311 patent goes on, doesn't expire until 2031.

So when you get to the question on the verdict form about lump sum versus running royalty, it's really important that you check running royalty because that's the only way to compensate Solas for Samsung's continued use of the '311 patent all the way until the '311 -- until 2031.

All right. Let's talk about the other two patents.

The '450, we showed you -- this is the stacking

patent, and we showed you -- Mr. Credelle walked you through every single element of this. They have questioned two of these. I'm going to focus on one of them, that the image data is supplied externally.

First they questioned the connected -- Mr. Credelle showed you that it's connected through the contact hole. Dr. Fontecchio admitted it was electrically connected.

The next issue that they challenge is whether there is image data supplied externally through the selection transistor. We showed you that the image data comes in through this data line, that it comes in through T2, through T1, and through the selection transistor, just like the claim requires.

Mr. Credelle testified that it does, as well. Image data supplied externally through that selection transistor?

Yes, it is.

And Dr. Fontecchio admitted on cross-examination that the image data signal is an external data line, and it goes through T3.

We've met every element of the '450 patent, and we're going to ask you to find that it was infringed.

On the '338, this is that complicated circuit diagram that had the driving transistor, the holding

transistor, and the switch transistor. We showed you every element.

Mr. Credelle walked you through step-by-step, and I -- we did our level best to teach you that circuit and why these elements are met.

They challenged several of these, and I'll go through them real quick. They challenged whether it's connected. We've already talked about that. Mr. Credelle and Dr. Fontecchio admitted they're electrically connected.

I do want to spend one minute on the write current.

So Mr. Credelle testified that the switch transistor makes a write current flow between the drain and source of the driving transistor. And remember, we saw that timing diagram that had the data-writing period, and it is during the data-writing period that data gets written to the voltage on that lower capacitor.

And this write current is a pull-out current. Why? Because the data comes in, and instead of going down to the OLED, instead, it goes this way and up. It does not go down to the OLED. And that's what we showed you. That's why this is a pull-out current that meets the Court's claim construction. That's what Mr. Credelle testified.

He said -- we asked him: Why is this a pull-out current?

09:39:11 Because it's pulled out of the current in the
09:39:15 step, this writing step, as opposed to going through the
09:39:18 OLED material.
09:39:18 Dr. Fontecchio said: Well, it's not a pull-out
09:39:25 current. It's a push-in current.
09:39:27 But he told you he'd never even used that term
09:39:30 before, had no idea what pull-out meant.
09:39:33 And going back one step. Remember his diagram
09:39:37 didn't show you that it went up to the capacitor. His
09:39:40 diagram stopped there, and I had to elicit on
09:39:42 cross-examination that he failed to show you that? And
09:39:46 then he admitted that, well, an equal -- an equal current
09:39:50 also goes up, just like Dr. -- Mr. Credelle said. He
09:39:57 admitted that on cross-examination and admitted that that
09:39:59 was not something that he showed you.
09:40:01 The next element that they challenge is holding
09:40:12 transistor. The holding transistor, we explained, is T3,
09:40:14 and it holds the voltage on Vcap because when it turns off,
09:40:21 the voltage can't leak out. That's what we showed you.
09:40:25 That's what Mr. Credelle testified. Why is it a holding
09:40:28 transistor? Because when it's turned off, the voltage
09:40:32 can't leak out.
09:40:33 And Dr. Fontecchio admitted the exact same thing,
09:40:35 when it turns off, it holds that voltage on Vcap because
09:40:40 there's no place to go?

09:40:42 And he said: Approximately.

09:40:44 He also hid the ball and failed to show you
09:40:48 information. You remember that testimony.

09:40:50 Ladies and gentlemen, we showed you all of the
09:40:51 elements of the '338, the '450 and the -- and the '311.

09:40:58 So when you get to the verdict form, we are going
09:41:00 to ask you to check yes, have we proven by preponderance of
09:41:04 the evidence that Samsung infringed any of the claims.

09:41:08 And when you get to Question 3, we are going to
09:41:11 ask you to find, yes, that Samsung acted willfully because
09:41:17 the evidence supports that finding, as well.

09:41:19 Now, I'll talk to you briefly about damages.
09:41:22 Damages also comes down to credibility, the credibility of
09:41:26 Mr. Dell versus that of Mr. Martinez.

09:41:29 Mr. Dell was clear, he was forthright with you,
09:41:35 both on direct and cross, and he applied the law. He
09:41:40 awarded damages -- calculated damages in accordance with
09:41:46 Judge's instructions.

09:41:47 Mr. Martinez, did not follow the law. Instead he
09:41:51 gave you the ludicrous, ludicrous assertion that the
09:41:56 purchase price that Solas paid for these patents is an
09:42:01 absolute ceiling on damages. That does not comport with
09:42:04 the Judge's instructions, it does not comport with the law,
09:42:07 and most importantly, it does not comport with your common
09:42:09 sense. That is an absurd assertion.

09:42:13 The Court's instructions tell you you have to base
09:42:19 damages. The only way to properly do it is based on the
09:42:23 Defendants' use. Mr. Martinez didn't do that.
09:42:26 With respect to the smallest salable patent
09:42:34 practicing unit, we presented Mr. Credelle to testify that
09:42:36 the smallest unit that practices those elements is the OLED
09:42:39 display module. We put him up there. He was there to
09:42:46 defend his opinion on cross-examination. And, importantly,
09:42:50 this is just a small sliver of the phone. This is a small
09:42:54 portion of the total cost of the phone, the total revenue
09:42:57 of the phone, and it's only this small sliver on which
09:43:04 Mr. Dell uses as the base to apply the small royalty later.
09:43:08 For cost savings, we presented Samsung's own
09:43:12 documents because Mr. Dell relied on that for cost savings
09:43:16 for the '311 damages. It was unrebutted, and they
09:43:19 presented no documents in response. Mr. Martinez says
09:43:23 they're just wrong but presented nothing in response.
09:43:26 On the patent as to whether -- UDC versus Casio,
09:43:34 this came down to the experts. Mr. Credelle said UDC.
09:43:39 Mr. -- Dr. Fontecchio says Casio. It's a credibility
09:43:43 determination. The UDC were OLED patents, and Casio were
09:43:48 LCD.
09:43:48 The damages statute says you have to look at use,
09:43:54 and that's what Mr. Dell did. You've seen these before.
09:43:56 He looked at how many modules, the average price and

revenue, and that's what he used as his base. He applied the royalty, and that gave you these damages that was supported by the evidence.

And, ladies and gentlemen, when you get to the question on damages, these are the numbers we're going to ask you to write in.

The damages support -- the evidence supports a finding that the proper damages for the '450 patent are $25,824,919. Those for the '338 patent are $27,326,497. And those for the '311 are $35,412,046.

Thank you very much. Ladies and gentlemen, I'll be back after Mr. Credelle -- Mr. Haslam.

THE COURT: Defendants may now present their closing argument. Would you like a warning on your time, counsel.

MR. HASLAM: 10 minutes, please.

THE COURT: I will give you a warning when you have 10 minutes remaining. You may proceed with your closing when you're ready.

MR. HASLAM: Good morning. I want to add my thanks to the hard work that you've put in the last week. This has been a trying time, and being on a jury when you hear evidence sort of from the end of a fire hose is not easy. You put in long days, you stayed late in the evening, and you've been here every day listening intently.

09:45:45 And on behalf of myself, my client, and my team, we thank
09:45:49 you for helping us decide a dispute that a week ago you
09:45:52 knew nothing about.
09:45:54 When I had a chance to speak to you at the
09:45:58 beginning of the case, I said this was a case about
09:46:01 innovation. Not the innovation of Solas and not the
09:46:07 innovation of Casio or Atmel, but the innovation of Samsung
09:46:11 Display.
09:46:11 We showed you that Samsung Display made the first
09:46:17 OLED display for smartphones. They had the first flexible
09:46:26 OLED display, and they had the first integrated touch
09:46:29 sensor.
09:46:29 That technology is world class and world leading.
09:46:37 The proof of that is not only the success of the Galaxy
09:46:40 smartphones, but also the fact that those displays are used
09:46:45 in the Apple iPhone and the Google Pixel.
09:46:51 The innovation that led to Samsung's
09:46:57 seven-transistor design required new designs, new
09:47:00 structures, and new materials.
09:47:02 Now, we brought Mr. Kwak here who was the engineer
09:47:09 at Samsung who had spent 20 years working on OLED displays,
09:47:16 got awarded 160 patents. He designed the seven-transistor
09:47:23 circuit, and he led the SDC team that designed the Y-OCTA
09:47:28 display with integrated touch sensors.
09:47:30 It's no surprise, then, that the experts all

relied on his testimony. He was here.

Solas could have asked him about the parts, about how they operated, what were the individual transistors, and what did they do. Think back on the cross-examination, they didn't ask him about that circuit, they didn't.

Now, Mr. Fenster, just said this is a case about credibility. And I sort of agree with him. But the case you heard from Solas wasn't based on fact. Solas told you in opening that Mr. Credelle would slowly walk you through the case, and he previewed that it was going to take a long time.

When it came for them time to make their case, what did you see? A lot of slides. And the slides had Samsung documents on it, but the next slide had just Mr. Credelle's drawings not based on those.

Instead of actual pictures, Mr. Credelle time and time again put up his rendition of the Samsung documents. He didn't rely on the documents themselves.

Suppose your neighbor sells their house and moves and somebody moves in. About a month later, they come over to your house, and they say, hey, half your property is on -- is on my property. And they say I've got 10 surveys to show you to prove it. You might say, well, let me see the surveys.

So the new neighbor goes home, comes back with a

map and a Crayon on it that says, well, here's that shows your property is on mine.

That's what we saw time and time again from Mr. Credelle.

And I want to start as one example, the '450, Mr. Fenster didn't talk about this limitation, but we spent a lot of time on it, the organic luminescent layer formed on said at least one first electrode. A mouthful. But the issue is, where was the electroluminescent layer? It had to be over or covering certain transistors.

And what did Mr. Credelle show you? He showed you the picture on the right. We showed you the picture on the left. The picture on the left was in Mr. Credelle's expert report that he provided to us before trial.

He swore under oath when he signed that report that this was true and accurate, and you can see the electroluminescent layer, which is the red, the green, and the blue, is inside the little lines that it's supposed to be in. That's where the electroluminescent layer is, and that doesn't infringe.

Mr. Credelle had to demonstrate that the electroluminescent layer was outside of those boxes, and that's what he drew on the right. And you can see in his -- he still has those little red and blue boxes, but he drew the layer outside it.

But what did he say on cross-examination? I don't have any direct evidence of that. I don't have any direct evidence of that.

You're asking for $88 million, and you don't have any direct evidence of that?

Who did have the direct evidence of that?

You heard Mr. Padian say that before this lawsuit, they hired two of the best companies to tear down the Samsung phones, and he even said they tore it down layer-by-layer.

If they wanted to show you where the electroluminescent material was in fact, why didn't they show you those teardowns? He spent millions of dollars on it. We didn't see it, and Mr. Credelle didn't see it.

Why not? Mr. Credelle knew that the teardown would show where it was. Remember, he said, I'll give you my Samsung phone, and you can tear it down. What was the response? It's too expensive.

Too expensive? In a lawsuit where you're seeking $88 million, it's too expensive? And in any event, they had already spent million of dollars doing it. Why do you think that they didn't give those drawings -- those teardowns to Mr. Credelle? Because they wouldn't support the hand-drawn figures that he put in what he showed you.

You want to talk about credibility, there it is.

09:53:41 They're probably still in his office. And I think the
09:53:45 reason that you didn't see them is because they support
09:53:49 what Samsung is saying. The electroluminescent layer --
09:53:52 material is right where it's supposed to be, not where
09:53:55 Mr. Credelle drew it in order to prove infringement.
09:53:57 And if you believe that, then there is no
09:54:02 infringement of the '450 patent.
09:54:05 Let me give you another example. Claim 7 -- I'm
09:54:14 going to move to the '311 patent. Claim 7 requires two
09:54:23 things, a substantially flexible substrate and a touch
09:54:28 sensor on that substrate. And those two features wrap
09:54:37 around the edge of the display.
09:54:40 The display is not part of the claim. The two
09:54:46 features, the substrate and the touch sensor, have to wrap
09:54:50 around the edge of the display.
09:54:55 Let me sort of try to give you a sense, I think,
09:55:00 of what we believe the difference is between what the '311
09:55:03 patent claims and what's -- Samsung does.
09:55:07 Think of wallpaper. Wallpaper, you have the
09:55:12 paper, and then you put a print on top of it. And then you
09:55:17 take it and you put glue on it and you hang it on the wall.
09:55:22 And if you've ever tried to do wallpaper, it's sometimes
09:55:25 difficult to line up the seams and line up the prints, and
09:55:30 it's messy.
09:55:35 Samsung did away with the wallpaper. They paint

the wall. The two are different. The two are very different.

I've shown you Figure 7, which is an example just to demonstrate this. Figure 7 shows the substrate and the touch sensor, which are in yellow, and you can see the display, which is below, and the cover above, which are not part of the claim.

The touch sensor and the substrate are separate from the display. And in the Samsung products, the touch sensor is on top of the display, and the substrate is part of the phone -- part of the display. And if it's part of the display, it is not the separate substrate and touch sensor of the patent.

So the issue really is: What is this thin-film encapsulation layer?

We showed you a document from the Samsung documents that specifically talks about the panel, the display. And it shows you that the TFE layer, the first CVD layer, the second CVD layer, the monomer, the TFE, is actually the top part of the display.

And Mr. Kwak told you that if the TFE layer is not on the display, that within an hour, that material will stop working, and there will be no light emitted from it. It is the -- it is the part of the display which protects the OLED.

09:57:28 Now, you heard from Mr. Credelle that the TFE is
09:57:34 not part of the display because it doesn't emit light.
09:57:39 Well, that's like saying the glass around the light bulb,
09:57:46 which protects the filament inside, isn't part of the light
09:57:50 bulb because it doesn't emit light, but we all know the
09:57:54 glass is a part of the light bulb. It protects it from the
09:57:57 air, from moisture, and from dirt getting into it, just
09:58:03 like the TFE layer protects the display in the Samsung
09:58:11 devices.
09:58:11 Now, Dr. Sierros also talked to you about the TFE
09:58:16 layer, and he told you that it is an essential integral
09:58:20 part. Now, Dr. Sierros is a professor. We took him out of
09:58:25 the classroom and put him in the courtroom, and it didn't
09:58:28 go very well. This may not be what he's cut out for. But
09:58:34 the one thing I submit to you is he is an expert in the
09:58:38 field. The judge accepted him as an expert, and they
09:58:42 didn't quibble about it.
09:58:47 And the one other thing is, I think we all can
09:58:52 agree that what he said was honest, and what he said is:
09:58:55 You had to have the TFE layer as part of the display in
09:58:58 order to protect it and protect the luminescent material
09:59:05 from being destroyed.
09:59:06 Now, what did Mr. Credelle show you? Mr. Credelle
09:59:13 showed you the document on the left. Notice on that slide,
09:59:16 there is no citation to a Samsung document. That's because

09:59:21 this is another drawing he made up. There is no document
09:59:28 that shows the OLED display being separate from the TFE.
09:59:31 We just see, on the right, the document where it shows it
09:59:34 as part of the display.
09:59:37 And the document he's relying on, which is the
09:59:40 touch sensor, simply is discussing that here are the
09:59:44 layers, the colored layers. The YL -- YILD in the blue and
09:59:53 the red, that's the touch sensor, and it's showing simply
09:59:55 that it happens to be on top of the TFE layer. But that's
10:00:03 natural. Because as we see on the right-hand side, the TFE
10:00:05 is the top part of the display.
10:00:07 So if you're going to tell somebody in a document
10:00:11 where to put the touch sensor, you're going to tell them to
10:00:14 put it on top of the display, which happens to be on top of
10:00:16 the TFE layer. That document doesn't support the fact that
10:00:18 the TFE layer is not part of the display.
10:00:21 The second issue in the -- we're talking about
10:00:28 with the '311 is wrapping around an edge. I've got my --
10:00:36 just a pad of paper here, and if you flex the edges, the
10:00:42 edge really doesn't move. I don't think you can see two
10:00:48 separate surfaces when you just bend the edges. And even
10:00:57 if you could and even if that wraps around the edge, is
10:01:01 that worth $35 million? I don't think so.
10:01:04 Finally, you also heard about the Z Flip. That's
10:01:13 the phone, and it's DTX-471.

10:01:17 The flat display when you open it up, touch sensor
10:01:23 is on the display, the display is underneath. What happens
10:01:29 when you fold it up? The display wraps around the touch
10:01:38 sensor, not the other way around.
10:01:39 And on this one, I'd just ask you to remember the
10:01:42 example about wrapping a Christmas present, where the paper
10:01:46 goes on the outside, not the inside.
10:01:49 Now I'm going to turn briefly and I'm going to run
10:01:57 through the '338 patent.
10:01:58 You repeatedly heard this week, it's the words of
10:02:07 the claim which matter. The words are what define the
10:02:10 boundaries of the claim. By focusing on the words, I'm
10:02:16 going to show you why we don't infringe.
10:02:18 I'm going to start with a switch transistor, which
10:02:31 makes a write current flow between the drain and the source
10:02:36 of the driving transistor. And the Court told you the
10:02:39 write current is a pull-out current, pull-out. Out isn't
10:02:45 in. It's as simple as that.
10:02:49 Mr. Kwak showed you that what happens with the
10:02:55 selection transistor -- the switch transistor is the
10:03:00 current comes in from outside, and it goes around to the
10:03:11 capacitor. It doesn't leave the circuit.
10:03:16 Mr. -- Dr. Fontecchio also said they have a
10:03:19 push-in current. Think of this as a highway with an
10:03:23 on-ramp and an off-ramp. The off-ramp takes cars off the

10:03:30 highway. The on-ramp puts cars on the highway.

10:03:34 The '338 took cars off the highway on the

10:03:39 off-ramp, the pull-out ramp.

10:03:43 Samsung uses the on-ramp, it puts current into the

10:03:47 circuit.

10:03:48 Boy, you don't want to get those mixed up if

10:03:53 you're on the highway.

10:03:54 So it's clear, I think, that a pull-out current is

10:04:01 not a push-in current. And Mr. Credelle himself told you

10:04:05 the significance of this.

10:04:08 He said: Every word can be important. Sometimes

10:04:14 it's the difference between "on" and "in" that can make a

10:04:22 difference in a claim. He said that to you on March 2nd.

10:04:25 Well, this is one of those cases. In isn't out.

10:04:37 Now, I'm going to take a look at the -- another

10:04:40 limitation, the holding transistor which holds a voltage

10:04:44 between the gate and the source. A transistor has two

10:04:50 ends, a left and a right end and a gate on top, a switch on

10:04:55 top.

10:04:56 In this field, they happen to call them the source

10:04:59 and the drain. It's left and right. The question is: In

10:05:03 this case, what does the holding transistor, which they say

10:05:08 is T3, connect to?

10:05:09 T3 is connected to the gate and the drain of T1,

10:05:23 not the gate and the source, which is up on top. It's as

10:05:28 simple as that. They've got the wrong end connected, and
10:05:32 the reason this is important is Samsung's seven-transistor
10:05:37 design had to come up with a different concept in order to
10:05:39 make it work.
10:05:40 Dr. Fontecchio also confirmed that it's located
10:05:54 between the gate and the drain, not the gate and the
10:05:57 source.
10:05:57 Next in the '338 is a driving transistor, one
10:06:06 of -- one of the source and drain, which is connected to
10:06:10 the pixel electrode.
10:06:15 In the Samsung circuit, Mr. Kwak told you that T6,
10:06:20 which is a transistor between the driving transistor T1 and
10:06:27 the electrode, is there to disconnect T1 from T6.
10:06:32 Dr. Fontecchio said the same thing.
10:06:41 What was the argument you heard to try to satisfy
10:06:43 this claim limitation? Mr. Credelle added the word
10:06:49 "electrically connected." He said, well, it's electrically
10:06:54 connected. But if it's electrically connected, he
10:06:58 admitted, it is connected to both the source and drain
10:07:01 because T1 is on.
10:07:03 Well, if you're connected to both, you're not
10:07:06 connected to one of.
10:07:10 When I take my seven-year-old grandson across the
10:07:14 street, I tell him to take one of my hands. He takes one.
10:07:18 He doesn't take both.

10:07:20 But that's what their argument is, that it's
10:07:23 electrically connected in -- connected to both, but the
10:07:27 claim requires being connected to just one of.
10:07:30 Now, I want to go back just briefly to the '450
10:07:35 patent, again. I've heard a lot about the selection
10:07:38 transistor, it gets image data supplied externally through
10:07:44 the selection transistor.
10:07:46 Let me put it this way: Suppose a circuit is a
10:07:51 house. It's got a front door, T2. It's got a door to the
10:07:58 bathroom, T3. It's got a door inside the bedroom, T1. The
10:08:04 claim requires an external signal. How does somebody get
10:08:10 into a house from outside? How do you get into a house
10:08:13 from an external source? You go through the front door.
10:08:17 Once you're inside, you can go through the door to
10:08:21 the bedroom or the door to a den or the door to an office.
10:08:26 But now you're inside the house. This claim is talking
10:08:30 about: How do you get into the house? How do you take
10:08:35 something from outside or external and put it inside?
10:08:40 Mr. Credelle focused on T3. That's an inside
10:08:48 door. It's not the external door that receives people from
10:08:51 outside with the external signal.
10:08:53 Both Mr. Fontecchio -- Dr. Fontecchio and
10:09:05 Mr. Credelle both agreed that the external connection is to
10:09:08 T2. It does, which means it's connected.
10:09:13 Now, you heard the allegation about copying, but I

10:09:20 1 think Mr. Kwak said there was no copying of the Atmel
10:09:25 2 technology. He testified to that. They really didn't
10:09:30 3 cross-examine him on it.
10:09:32 4 He also said: I'm prepared to talk and answer any
10:09:36 5 questions on that topic. Did they ask him any? No.
10:09:42 6 I put a timeline up here which shows the
10:09:47 7 development by Samsung Display of its integrated touch
10:09:56 8 sensor, patented in 2009, flat-panel display integrated
10:09:59 9 with touchscreen panel, September 14th, 2010. And as he
10:10:06 10 said, there was no information on Atmel's metal mesh that
10:10:09 11 was used to design Y-OCTA. Y-OCTA as an internal mesh is
10:10:15 12 their own technology.
10:10:16 13 And, remember, Mr. Fenster told you in opening
10:10:26 14 that Atmel didn't invent metal mesh sensors. You heard
10:10:29 15 about the patent, the 3M, Mr. Frey, which the examiner
10:10:33 16 cited which showed before Atmel a metal mesh touch sensor.
10:10:37 17 We showed you the two patents that Samsung Display
10:10:45 18 had on the integrated touch sensor, both one in 2009 filed
10:10:51 19 and the other in 2010, that came before Atmel.
10:10:54 20 And, Mr. Beall, can we pull up the March 3rd
10:11:01 21 sealed transcript at Pages -- Page 96, 7 to 10?
10:11:05 22 Mr. Fenster told you that Samsung didn't know
10:11:13 23 about metal meshes until Atmel told them.
10:11:17 24 Mr. Kwak was asked: In 2010, did Samsung Display
10:11:23 25 have other publications about using metal mesh for the

touch electrodes?

Yes, that's correct.

Want credibility of the presentations, there it is. Their whole case on copying and their whole case on willfulness rests on, we taught Samsung metal mesh. They didn't. Samsung was already thinking about that back in 2009 and 2010 when they were getting ready and developing and trying to develop the integrated touch sensor.

And how did their innovation accomplish that? They removed the separate substrate that would attach to the display. Remember, you had a separate substrate and a separate touch sensor and you would glue it on the display. They got rid of the separate substrate, and that's one of the elements of the claim, flexible substrate. They got rid of it. They put that directly on top of the display. And they removed the gluing step.

So there's no infringement, we believe, on multiple grounds on these patents. And if you agree with that, then you should answer Question 1, no.

Now, we did present two arguments, but before I get there, I apologize. I put up some testimony from Mr. Shaikh asking him: Did you ever try to print a touch sensor directly on a display?

No.

They couldn't have because Atmel didn't make

displays. They had to sell a separate touch sensor on a separate substrate because they didn't make displays.

And when Samsung Display told them that they were going to try to print the touch sensor on the display, he knew that was something that he hadn't tried.

And on credibility, remember this, when I asked him, Mr. Shaikh, did Samsung tell you that they were going to print it directly on the substrate? What did he say? No.

When I confronted him with his testimony, he said, oh, well, I was talking about Samsung Electronics, not Samsung Display.

That's not a forthright answer. He should have just fessed up, yeah, they told me. And I knew I couldn't do that.

I'm going to go over quickly the invalidity of Claims 4 and 5 of the '450 patent.

You saw Dr. Fontecchio checked every box that was present in Utsugi.

The two issues they contest are whether the electrode limitation was there, at least the first electrode. Dr. Fontecchio said it was.

The second limitation is whether or not the insulation covered both transistors. And as Dr. Fontecchio indicated, he built a model based on the words that were

exactly in Utsugi that told him how he was making his product, and he made a model that followed that.

And he confirmed, which is up on the top right-hand side, he confirmed that his model looked just like the Figure 5 in the patent. And that's the one that was taken along the horizontal cut.

And as he indicated, the second transistor is down here at the bottom. So the lower picture shows the vertical cut. And you can see the second transistor there.

So there were two transistors. And that was the big fight on cross-examination, did Utsugi have the second transistor, and was there an insulation layer over it?

Now, this is about the -- Mr. Credelle's testimony about the '450. But as he described, in the '450, you have to have that insulation layer over the transistors or they don't work. Now, he was talking about the '450, but that principle applies to any semiconductor. There has to be insulation over the transistors or they don't work.

So Utsugi anticipates or at a minimum renders obvious Claims 1, 4, and 5 of the '450 patent.

And Utsugi was not before the Patent Office. They didn't have it. You're the first people to see it.

Now, let's look at the '311.

We showed you a patent application by Mr. Yilmaz and four other engineers who were working in England. And

10:16:36 he -- in that patent, as Mr. Yilmaz testified, he was
10:16:41 showing putting a copper metal mesh touch sensor on a PET
10:16:49 flexible substrate.
10:16:51 I showed you -- Dr. Sierros showed you what PET
10:16:58 looks like. And they were printing thin copper lines on
10:17:02 this in England, less than the thickness of a human hair.
10:17:08 And he said that what they were using was flexible.
10:17:11 You think it would be obvious if you just looked
10:17:15 at that, that that would wrap around the edge of a display.
10:17:21 It would wrap around the edge of this podium.
10:17:24 Now, we didn't rely just on Yilmaz.
10:17:29 THE COURT: You have 10 minutes remaining,
10:17:31 counsel.
10:17:31 MR. HASLAM: 10 minutes? Okay.
10:17:33 We didn't -- we didn't rely just on that. We
10:17:36 showed you another patent from 2009, the Joo, where he
10:17:42 actually shows the benefits of wrapping a touch sensor 94
10:17:45 on a substrate 96 from the top, around the edge, through
10:17:49 the side.
10:17:50 So I think it is -- it is in our view, in Yilmaz's
10:17:57 own work, coupled with Joo, renders obvious the '311
10:18:02 patent.
10:18:02 Now, I think based on what I've said that you
10:18:09 don't need to get to the damage issues. There is no
10:18:14 infringement, and the two claims of the '450 -- the three

claims of the '450 and the two claims of the '311 are not valid.

But if you do get to the issue of having to answer Question 3, I'm going to give you some pointers, I think, that might help you on determining what the valuation is. And I'm going to start with Atmel.

The negotiation between Atmel and Samsung that would have taken place was -- would have been in 2017. As you heard from Mr. Duvenhage and Mr. Martinez that the '311 patent had been extensively studied and analyzed by experts, brokers, lawyers, and shopped around twice to a hundred -- to over 170 companies. And, remember, those brokers are like real estate brokers. If they can sell that portfolio for more, they make more.

And what did the market say? The market said that you can only get $500,000.00 for the 12 patents, including the '311.

Now, Mr. Dell also relied on a cost savings analysis. And what he compared were metal mesh touch sensors being looked at by Samsung in 2014, not 2017.

Well, what did Mr. Kwak tell you about the touch sensors that they were looking at in that time frame? Atmel, 3M, from Samsung Electro-Mechanical? None of them worked with the Samsung product. None of them were suitable to use with the Samsung product.

10:20:15 Is it a fair cost comparison to say that this is
10:20:19 what it costs you to do what you're doing now, that you
10:20:23 could use this junk that really won't work, but it costs a
10:20:28 lot less? That's not a fair comparison. That's not a real
10:20:32 cost analysis. He should be embarrassed for that.
10:20:39 I doubt he would tell any of his paying customers
10:20:47 that that's a relevant way to do a cost analyst.
10:20:50 Now, I want to talk about Casio. Casio would be
10:20:54 been Casio and Samsung Display at the table, not Solas.
10:20:57 And Mr. Kim testified here, actually sat down across the
10:21:01 table from Casio right around this time frame. And what
10:21:09 were the relevant facts at that time? Samsung Display had
10:21:13 sold its displays, the ones accused of infringement here,
10:21:18 to Casio before the hypothetical negotiation.
10:21:24 But Casio knew Samsung Display's OLED technology,
10:21:29 and Casio and Samsung had a history of licensing and
10:21:36 selling patents. And I put down here 2012, license for
10:21:39 169 patents, and you see the amount. That was a lump sum
10:21:46 because that's the way Samsung licenses. The only one I'm
10:21:50 going to get to in a moment that wasn't is different and
10:21:53 not relevant to this case.
10:21:55 They also bought 85 patents for 1.35 million.
10:22:00 That's around the time of the hypothetical negotiation.
10:22:02 That shows you what the value and what Casio and Samsung
10:22:06 would have negotiated back then.

10:22:07 And what ultimately happened is years later, Casio
10:22:10 sold 724 patents for 1.15 million, after having valued by
10:22:19 Quinn Pacific.
10:22:20 Now, what Mr. Dell relies on is this UDC license
10:22:27 from 2005, eight years before the hypothetical negotiation.
10:22:33 And you heard from Mr. Kim what Samsung needed was the
10:22:39 luminescent material to make its products. But UDC said we
10:22:43 won't sell you that unless you take a license. So Samsung
10:22:45 had to take a license.
10:22:47 And on the issue of comparability, you heard
10:22:52 Mr. Dell say that Mr. Credelle told him he'd reviewed all
10:22:57 144 patents. Mr. Credelle put a slide up in the begin --
10:23:01 in his direct examination that he had reviewed 144 patents.
10:23:05 Well, what did he say? I only reviewed about 70 of the
10:23:10 144. Two -- 60 percent of them he didn't bother to review.
10:23:15 Talk about credibility, that's -- that's not credible.
10:23:21 So the final thing about the UDC, you remember
10:23:26 Mr. Dell said the license had a royalty based on how many
10:23:33 colors you used. If you use one color, it was one rate.
10:23:38 If you used two, it was two. And he testified on direct,
10:23:42 well, somebody told me they used two colors.
10:23:45 Mr. Kim came on and told you, in fact, during that
10:23:49 license, they only used one color.
10:23:55 And Mr. Dell admitted if he was wrong on his two
10:23:58 colors, you had to cut his number at least in half.

10:24:04 Remember that, at least in half, because they only used one
10:24:10 color. And that's unrebutted.
10:24:14 They didn't cross-examine Mr. Kim to try to get
10:24:16 him again to say, no, we really used two or three colors.
10:24:21 So now let me talk just briefly about the verdict
10:24:26 form. I just put these up and the judge read it to you,
10:24:32 whether it's a comprising claim or not, you have to find
10:24:36 each and every element. And I believe what I've just gone
10:24:39 through demonstrates there are multiple elements missing.
10:24:43 Can we put up the verdict form?
10:24:45 So I believe that when you've come to Question 1,
10:24:48 the answer should be no. There's at least one element, if
10:24:53 not multiple elements, that are missing in these accused
10:24:56 devices.
10:24:58 Can we have the next?
10:25:02 When you get to Question 2, we believe that we
10:25:11 have carried -- it's a heavier burden, I recognize, but we
10:25:17 think that the evidence is pretty clear in front of you
10:25:20 that Claim 4 and 5 of the '450 patent are invalid, and
10:25:23 Claim 7 and 12 of the '311 -- I want to just say something
10:25:29 about the '311.
10:25:30 The '311 has 20 claims in it. This invalidity
10:25:36 challenge is to only two of them. If you find that Claim 7
10:25:40 and 12 are invalid, there are still 18 claims left in the
10:25:45 patent. That patent would still be in existence, and Solas

could still enforce those other 18 claims.

You only get to Question -- Question 4, the damages, if you find that you've answered Question 1, yes, and Question 2, no.

But the damages number that you may fill out for Question 4 is only if you find one patent valid and not infringed. If you believe that two of the patents aren't infringed, the number of damages for that is zero. And that's how you would fill out --

Can we go to Question 4?

THE COURT: You have one minute remaining, counsel.

MR. HASLAM: You'll see you do it by patent.

Now, I can't talk to you again after they get up. They can say whatever they want. I trust you to sort fact from fiction. But here's some answers that I think you should ask them to give you. Is wallpaper the same as paint? That's the '311.

How is -- how is out the same as in? How is the source the same as the drain? Is one of both of? How is external the same as internal? And where is the electroluminescent layer? Where is it?

Make them show you that. They're going to throw some big numbers up there, and they're going to talk about why you should find that Solas is entitled to that money.

But the case rests on the facts --

THE COURT: Your time is expired, counsel. Take a couple seconds and finish up.

MR. HASLAM: -- make sure they answer those questions and that they try to prove to you why what I said is wrong.

Thank you.

THE COURT: All right. Plaintiff, you may now present your final closing argument.

Would you like a warning on your time before it expires?

MR. FENSTER: At 13 minutes remaining, Your Honor.

THE COURT: All right. Anything further?

If not, proceed with Plaintiff's final closing argument.

MR. FENSTER: Thank you.

Ladies and gentlemen, Mr. Haslam got up here and he talked about on ramps and wallpaper and paint, houses and legal pads, Christmas presents and grand-kids. Those are all fun to talk about, but none of them have anything to do with the claims. What you need to do is judge the credibility of the parties before you.

And one thing to consider is whether Samsung kept their promises. At the beginning of this case, they told you that they told you that they were going to show you

that the '311 patent was invalid for Chen. He didn't even mention it. Complete, complete broken promise.

I do want to go to validity first -- actually, let's go to electroluminescent material. This will be Slide 66.

This was the first time we'd heard that argument. That was kind of new. Dr. Fontecchio had never raised it. Mr. Haslam just argued it for the first time. Dr. Fontecchio never challenged it. Mr. Credelle showed you exactly what it was. He put up a slide saying direct versus indirect evidence.

Well, this is some additional testimony reminding you from Mr. Credelle's direct that he had the electro- -- electroluminescent material lying over the surface.

Next slide.

And he studied the process extensively. And the Court's instructions say indirect, direct, you have to consider both.

Now, let's go to the validity section, please.

So I want to talk to you about the validity. We have a -- these patents are presumed valid. You can only overcome them with clear and convincing evidence.

That means that it -- they have to present sufficient evidence to give you an abiding conviction that these patents are invalid.

10:30:12 Dr. Fontecchio admitted that he didn't apply the
10:30:16 law. The Court's instructions on anticipation requires
10:30:20 that all claims be in a single reference. And he said: I
10:30:26 would say no.
10:30:26 Now, this is the slide that Samsung just presented
10:30:31 to you, and I almost can't believe it. This was on [1d].
10:30:37 You remember [1d] of Utsugi, so the claim element for the
10:30:43 '450 requires that it be connected -- the electrode be
10:30:46 connected to both transistors. And he says unrebutted
10:30:51 evidence.
10:30:52 Was he not here for cross-examination? We
10:30:56 dismantled Dr. Fontecchio's opinion on this. He said it,
10:31:01 but he provided no backup.
10:31:04 He admitted that to show this element, [1d], it
10:31:09 requires showing that the electrode is connected to both Q_s
10:31:12 and Q_I.
10:31:14 This was the disclosure that he showed to you, the
10:31:19 sum slide, one slide that Dr. Fontecchio showed you that
10:31:22 Mr. Haslam couldn't even show you because we Xed it all
10:31:26 out. This was the disclosure that he showed.
10:31:28 And he admitted that every one of these
10:31:29 disclosures does not explicitly show the electrode
10:31:33 connected to Q_s. You remember this testimony. I went
10:31:36 through it one by one. Figure 5 didn't show it. The first
10:31:42 sentence didn't show it. The second sentence didn't show

it.

That is the sum total of what Samsung showed you about Utsugi expressly disclosing Element [1d], that the electrode is connected to both active elements. In other words, they had no evidence. I dismantled all of it. Mr. Haslam had no response on redirect then, and he had nothing to say to you now.

This is a complete and utter failure of proof and a broken promise. It's no wonder that Mr. Haslam didn't mention the Utsugi reference in the beginning.

He knew there was this hole in the case. He didn't want to make a promise he couldn't -- he couldn't keep. Didn't even mention it.

Got nervous during the trial, and they put it in, see if we can get one by them.

They did make a promise on Chen, and that utterly fell apart.

Now, if 1 -- and [1c] was not there either.

THE COURT: 13 minutes remaining.

MR. FENSTER: Thank you, Your Honor.

He admitted that -- that that was out.

And most importantly admitted that if [1d] was missing, the patent was not invalid for anticipation or validity.

Yilmaz and Joo relies solely on Mr. Sierros. The

10:33:07 only thing that's clear about Dr. Sierros is that his
10:33:10 testimony was not clear and convincing, sufficient to
10:33:13 invalidate the '311 patent.
10:33:15 Now, let's go back to willfulness.
10:33:21 Can you take me to the willfulness section?
10:33:26 Ladies and gentlemen, this is what we showed you
10:33:31 that Samsung took. They took the invention.
10:33:37 They say that they didn't take anything from
10:33:42 Atmel. But, ladies and gentlemen, at the bottom is Jolle,
10:33:45 the embodiment, and at the right is Samsung's first
10:33:47 infringing product, the S8.
10:33:52 Do you believe that they didn't take any
10:33:54 information from Atmel?
10:33:58 Now, Mr. Ward is going to address damages.
10:34:03 MR. WARD: And, Your Honor, could I have a
10:34:09 two-minute warning?
10:34:09 THE COURT: Yes.
10:34:10 MR. WARD: Thank you.
10:34:10 Good morning. I, too, want to thank you for your
10:34:20 time and your attention, and I also want to start off doing
10:34:24 something a little bit different this morning and that is
10:34:26 to confess something to you. I made a mistake.
10:34:31 Now, you were told it was a misrepresentation, but
10:34:34 you also learned the difference between a misrepresentation
10:34:37 and a mistake because a misrepresentation is something

that's intentional, done to deceive.

When I was cross-examining Mr. Martinez, I honestly believed that his damages number was 1.15 million for the '450 and the '338 and 500,000 for the '311. That's what I thought, but then I was corrected.

It's up to, up to 1.15. Up to 500,000. So Samsung is saying, that's not the right amount. You can actually award less. They want a deal in here, ladies and gentlemen.

Now, they talked about the spec of saw dust in my eye, but I'd like to talk about the plank in theirs.

You've heard a lot about credibility. And I think all you need to know about credibility is what we learned that Samsung tried to do in front of you, in front of us.

Remember this slide from opening? They said we've got these three brokers that reviewed the value of this portfolio. And I'm not really caring what these brokers reviewed and what their opinions were.

We've got the LG license, PTX-745, that tells you a good idea of what this patent portfolio was worth. But then you learned they changed it. They removed Sagacious because, you know what, they felt like that -- that reference said something good about these patents. That reference to Sagacious was, you know what, it's No. 8 out of 461 assets.

10:36:25 Again, I don't really care what Sagacious says.
10:36:28 What I want to point out to you is that they tried to
10:36:30 change that slide and thought that nobody would notice.
10:36:36 And think about this, Samsung is probably on their
10:36:39 best behavior in this courtroom in front of you, their best
10:36:43 behavior. Think about how Mr. Padian, Solas, would be
10:36:47 treated if they went and knocked on Samsung's door. We've
10:36:51 got some valuable patents we'd like to you take a look at.
10:36:55 Mr. Padian told that you this is the one place
10:36:58 that for five days, turns out it took six days, that we'll
10:37:03 be on a level playing field.
10:37:05 And I asked you back in voir dire, all we want is
10:37:07 a level playing field. You're to treat us the same no
10:37:13 matter -- regardless of size. And I think you have.
10:37:15 But you see that we have a Defendant that says:
10:37:22 We don't trespass, we don't infringe; but if we're wrong,
10:37:26 your patents are all invalid. And if we're wrong about
10:37:29 that, well, we only owe you what you paid for your
10:37:35 property, or up to -- up to what you paid for this
10:37:39 portfolio.
10:37:39 That kind of makes about as much sense if
10:37:39 ExxonMobil had trespassed on Solas's real estate, they cut
10:37:44 their fences, they went in and drilled a well, they started
10:37:46 pumping out billions of dollars of oil and gas. Solas
10:37:51 catches them and said, wait a minute, I think you ought to

pay me for my property.

Well, Exxon could say, wait a minute, we're not on your property. Well, you've proved that. Well, your deed is no good. They failed to prove that.

Well, Solas, you don't have your own oil well, your own pipelines, you don't have drilling crews, you don't have a refinery, you don't have gas stations. You know what, we'll just pay you what you paid for your property, not for what we used.

You all learned that that was not the law. Now they want to get a lump sum. They want a deal. They say check lump sum so that we don't have to pay for the rest of infringement on the '311 patent. That's a box you've got to check, choose between a lump sum and running royalty. Running royalty is paying for the use because there's still 11 years left on this patent.

We showed you the smallest salable patent practicing unit. Those are the units, how much use did they get out of it?

And when Mr. Sierros was asked about that smallest salable patent practicing unit, Mr. Haslam said: I didn't touch that subject. Well, of course, they didn't touch that subject. They don't want to talk about use.

Only Mr. Dell touched that subject. He told you exactly what the revenue was based upon the average price

of those displays, the amount that they were using them, and that's unrebutted. They didn't say those numbers were wrong, average price or units.

And he gave you the rate and damages. He did the same ting for the '450 and the '338, and he told you those total damages. He did the hard work.

Mr. Martinez said: Well, no, no, no, let's be reasonable. Let's be reasonable here. He only wants to look at part of the statute. He didn't look at the smallest salable patent practicing unit.

But then you learned that Mr. Martinez pretty much does what he needs to do, depending on who pays him. When he's working for plaintiffs, it's a reasonable royalty. That's the eloquent approach.

Then he works for defendants, he uses a lump sum, and that's the eloquent approach. I think that tells you what you need to know about Mr. Martinez.

I do want to talk to you about that UDC patent license agreement because this is the other debate on damages. Do you use UDC, or do you use Casio?

Mr. Credelle told you that that this was the comparable license, that he was able to discard some of the patents just based on a quick review because they dealt with the materials and not with the architecture.

And right in the -- in the heading of this

license, it says "OLED Patent License Agreement."

And in 2005, Mr. Kim did say, we were only using one color. But I'm not sure Mr. Haslam was here or if he missed it, because subsequent to that time period, he said, oh, yeah -- remember on cross -- oh, yeah, we were using two colors. And that's why Mr. Dell relied upon this license.

And we know it wasn't just 2005 that they repeatedly renewed this agreement, it started as a running royalty, and you all saw the numbers, how much they paid. Samsung says, oh, that's not related to usage. We just paid that because we were told to pay that by UDC.

But think about these things, because they relate very closely to the hypothetical negotiation: Dr. Fontecchio said that these were fundamental patents, and Mr. Martinez had to admit that they had to have a license to the patents or they would infringe UDC's portfolio.

So you have infringement of a comparable technology, and we also note that in the very agreement, they admit that they wouldn't challenge validity. So it is a unique agreement.

They admit infringement, they admit that it's valid, it's a running royalty, it's all around the hypothetical negotiation when they're renewing it. It is

10:42:25 the most comparable license.

10:42:27 They say use Casio, but what happened when we

10:42:31 said, let's look at Casio? 70 out of 120 patents have

10:42:36 liquid crystal display in the title. Mr. Kim tried to say,

10:42:43 well, liquid crystal display, LTPS, that's -- that's only

10:42:46 for AMOLED at the time period.

10:42:49 But we showed them a document from that very time

10:42:53 where internally Samsung was saying, well, AMOLED is in

10:42:58 tough price competition with LTPS (LCD).

10:43:03 So we know that many of those -- many of those

10:43:09 patents were not relating to AMOLED technology, which is

10:43:12 why we say UDC, that you admit you infringe, that you admit

10:43:16 is valid, that deals with the running royalty is the most

10:43:20 comparable.

10:43:20 And if there's any dispute about the value of

10:43:22 these patents, you know, we were called or compared to

10:43:26 mangy old horses in voir dire, that these are worthless

10:43:31 patents.

10:43:32 Look at PTX-745 and see what LG, a competitor to

10:43:38 Samsung, paid. And they've got engineers, they've got

10:43:43 patent lawyers --

10:43:44 THE COURT: Two minutes remaining.

10:43:46 MR. WARD: Thank you, Your Honor.

10:43:47 They've got sophisticated people doing business.

10:43:53 They saw value, and they paid.

10:43:55 Cost savings documents, you've seen these.
10:44:02 Mr. Martinez says, oh, those can't be right. Just ignore
10:44:06 those. Don't believe your lying eyes, right. Well, then
10:44:10 where's the evidence that contradicts this? We used the
10:44:13 best evidence that Samsung produced.
10:44:15 Don't you know if they had documents that compared
10:44:18 the cost of these sensors that were different than these?
10:44:22 I wonder if these might be a little bit low. I wish I
10:44:26 could ask you for more because I think these facts would
10:44:29 warrant it, but I can't. We've based this case -- we've
10:44:33 argued this case based on the evidence.
10:44:36 You've seen these slides. I told you at the
10:44:39 beginning that we weren't going to ask you for these
10:44:43 damages numbers thinking you'd give us half. You've seen
10:44:46 royalty agreements -- or license agreements that actually
10:44:48 have higher rates of 3 and 4 percent.
10:44:51 But Mr. Dell said, I'm going to look for the
10:44:53 comparable licenses, the license that Mr. Credelle tells me
10:44:57 to rely upon, and I'm going to base my opinion upon that
10:45:01 evidence, and that's what he did.
10:45:03 Mr. Fenster told you at the start of this case
10:45:07 talking about what all I need to know I learned in
10:45:11 kindergarten. You all remember that? And I think you take
10:45:15 that back to the jury room because I don't think that
10:45:17 Samsung ever read that book. They don't know what to take

that doesn't belong to them.

And when you fill out that verdict form, you'll be letting them know that they've got to pay for what does not belong to them. When you find them liable for infringement that these patents are not invalid, that they willfully infringe and that they owe a reasonable royalty for the use made of Solas's protected patented technology.

Thank you very much for your time. We'll await your verdict.

THE COURT: All right. Counsel, you may return to the counsel table.

Ladies and gentlemen, I have a few final instructions that I need to give you before you begin your deliberations.

You must perform your duty as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion.

All parties in this case expect that you will carefully and impartially consider all the evidence, follow the law as I have given it to you, and reach a just verdict, regardless of the consequences.

Answer the questions in the verdict form based on the fact as you find them from the evidence presented in this case and following all the instructions that the Court has given you. Do not decide who you think should win and

then answer the questions to reach that result.

I remind you, ladies and gentlemen, your answers to the questions in the verdict form must be unanimous.

You should consider and decide this case as a dispute between persons of equal standing in the community, equal worth and holding the same or similar stations in life.

This is true in patent cases between corporations, partnerships, or individuals. The law recognizes no distinction between the types of parties, and all corporations, partnerships, and organizations -- other organizations stand equal before the law, regardless of their size, regardless of who owns them or the country of their origin, and they're all to be treated as equals.

Now, when you retire to the jury room to deliberate on your verdict, you're going to each, as I told you, have your own individual printed copy of these final jury instructions.

If you desire to review any of the exhibits that the Court has admitted into evidence over the course of the trial, then you should advise me by sending me a written note signed by your foreperson and delivered through the Court Security Officer.

I will then, upon receiving such a request, send you the exhibit or the exhibits you've asked for.

10:48:12 Let me remind you again, demonstratives are not
10:48:15 exhibits, and I cannot send demonstratives to you in the
10:48:20 jury room.
10:48:20 Now, once you retire, you should first select your
10:48:25 foreperson and then conduct your deliberations. And if you
10:48:29 recess during your deliberations, follow all the
10:48:32 instructions the Court has given you about your conduct
10:48:35 during the trial.
10:48:37 After you've reached a unanimous verdict, your
10:48:41 foreperson is to fill in those answers to the questions in
10:48:44 the verdict form in a way that reflects those unanimous
10:48:49 answers.
10:48:50 The foreperson should then date and sign the
10:48:52 verdict form on the last page and then deliver the verdict
10:48:57 form to the Court Security Officer or advise the Court
10:49:00 Security Officer that you've reached a verdict.
10:49:02 You should not reveal your answers until such time
10:49:05 as you are discharged by me, unless I direct otherwise.
10:49:10 And you must never disclose to anyone, not even to me, your
10:49:14 numerical division on any question.
10:49:16 Any notes that you've taken over the course of the
10:49:20 trial are aids to your memory only. If your memory should
10:49:23 differ from your notes, you should rely on your memory and
10:49:26 not your notes.
10:49:27 The notes are not evidence, and a juror who has

not taken notes should rely on his or her own independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

If during your deliberations you want to communicate with me at any time, please give a written message or a question signed by your jury foreperson to the Court Security Officer who'll bring it to me.

I'll then respond as promptly as possible, either in writing or by having you brought back into the courtroom where I can address you orally.

I will always first disclose to the attorneys in the case your question and my answer before I answer any question you might send me.

After you have reached a unanimous verdict and after I have discharged you from your position as jurors in this case, please understand, ladies and gentlemen, you're not required to discuss with anyone your service as a juror in this case.

However, at that juncture, after I have discharged you from your responsibility as jurors and accepted your verdict, then you are perfectly free to discuss your service in this case with anyone if you would like to.

The choice at that time is yours 100 percent and

yours alone.

I'll now hand -- hand one clean copy of the verdict form and seven copies of these final jury instructions to the Court Security Officer to deliver to you in the jury room.

Ladies and gentlemen of the jury, you may now retire to the jury room to deliberate. We await your verdict.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Please be seated.

Counsel, while the jury deliberates, you are welcome to wait here in the courtroom. Assuming you may elect to wait off premises, please make sure you're not far away so that if I receive a note or return of a verdict, I can reach you promptly.

I believe we have current cell phone numbers to reach lead and local counsel on both sides of the case. If we don't, make sure my law clerks have those before you would leave the building.

With that and awaiting either a note from the jury or the return of a verdict, the Court stands in recess.

COURT SECURITY OFFICER: All rise.

(Recess.)

(Jury out.)

01:53:31 COURT SECURITY OFFICER: All rise.

02:06:50 THE COURT: Be seated, please.

02:06:54 Counsel, I've received the following note from the jury. I'll read it for the record.

02:07:12 "The jury has reached a verdict."

02:07:15 And it's signed by Felecia Hux, who I believe is Juror No. 3 -- originally No. 4 before we lost Ms. Carpenter.

02:07:28 And it's dated with today's date.

02:07:30 I'll mark this as Item 1. And I'll hand it to the courtroom deputy to be included in the papers of this cause.

02:07:37 Let's bring in the jury, please.

02:08:05 (Jury in.)

02:08:06 THE COURT: Please be seated, ladies and gentlemen.

02:08:33 Ms. Hux, I am told that you are the foreperson of the jury; is that correct?

02:08:43 THE FOREPERSON: Yes.

02:08:44 THE COURT: Has the jury reached a verdict?

02:08:44 THE FOREPERSON: Yes, Your Honor.

02:08:47 THE COURT: Would you hand the completed verdict form to the Court Security Officer who will bring it to me?

02:08:48 Ladies and gentlemen, I am going to announce the verdict into the record at this time. And I'd like to ask

02:08:52

02:10:14

each of the members of the jury to listen particularly carefully as I do that, because once I've done that, I'm going to poll the members of the jury to determine and confirm on the record that this is the unanimous verdict of all seven members of our jury.

Turning to the verdict form and beginning on Page 4 wherein Question 1 is found:

Did Solas prove by a preponderance of the evidence that Samsung infringed any of the asserted claims?

The jury's answer is yes.

Turning to Page 2 -- excuse me, Page 5 where Question 2 is located:

Did Samsung prove by clear and convincing evidence that any of the following asserted claims are invalid?

As to Claim 4 of the '450 patent, the jury's answer is: Yes.

As to Claim 5 of the '450 patent, the jury's answer is: Yes.

As to Claim 7 of the '311 patent, the jury's answer is: No.

As to Claim 12 of the '311 patent, the jury's answer is: No.

Turning next to Page 6 of the verdict form where Question 3 is located:

Did Solas prove by a preponderance of the evidence

that Samsung willfully infringed any of the asserted claims of the '311 patent that you found were infringed?

The jury's answer is: Yes.

Turning next to Page 7 of the verdict form wherein Question 4A is located:

What sum of money, if any, paid now in cash has Solas proven by a preponderance of the evidence would compensate Solas for its damages resulting from infringement?

As to the '450 patent, the answer is: Zero.

As to the '338 patent, the answer is: $27,326,497.00. I'll say that again. $27,326,497.00.

As to the '311 patent, the jury's answer is: $35,412,046.00. Likewise, I'll repeat that answer. $35,412,046.00.

Turning next to Page 8 of the verdict form where Question 4B is located:

Are each of the amounts awarded in Question 4A a lump sum representing damages for past and future sales, or are each of the amounts you awarded in Question 4A a running royalty representing damages through January of 2021?

The jury is: Lump sum.

Turning to Page 9, the final page of the verdict form, I find that it is dated with today's date and is

signed by Ms. Hux as foreperson of the jury.

Ladies and gentlemen of the jury, let me poll you to make sure this verdict, as I have read it into the record, unanimously reflects the decision of all seven members of the jury.

If this is your verdict as I have read it, would you please stand at this time?

(Jury polled.)

THE COURT: Thank you. Please be seated.

Let the record reflect that all seven members of the jury immediately stood and rose in response to the Court's question to poll the jury.

This confirms that this is the unanimous verdict of all seven members of the jury. The Court accepts the verdict. And I will now deliver the original verdict form to the court security -- the courtroom deputy to be included in the documents of this case.

Ladies and gentlemen, this now completes the trial of this case. From the very beginning, I've instructed you repeatedly about not discussing this case with anyone, including the members of the jury itself, until all the evidence was heard and only then during your deliberations.

I'm now releasing you from that obligation, and I'm releasing you from all the obligations and instructions that I've given you as a part of your service as the jury

in this case.

That means you are free to talk about this case with anyone of your choosing. That also means that you're free not to discuss this case or your experience in this trial with anyone. That, too, is solely of your choosing. It's up to you.

Now, for at least three decades, because my actual practice in this courthouse goes back that far, at least for three decades, the practice and custom in the Marshall Division of the Eastern District of Texas has always been that the lawyers and the trial teams on each side could not initiate a conversation with the members of the jury.

But if the members of the jury, after they have been released by the Court, wanted to discuss their service as a part of the trial of this case, you were certainly free to do so.

As a practical matter, what that usually means is one or more people from each trial team is going to strategically position themselves at the bottom of the front steps. So that when you leave the courthouse, if you want to stop and talk, they're going to be available to you and right there.

They're not going to initiate a conversation with you. If you want to talk to one side or the other side or

both sides and there's somebody there available, stop and have as long a conversation as you want to. But, again, it is solely your choice. They will not try to initiate a conversation with you. But I promise you, they will make themselves available to you in case you want to initiate a conversation with them.

That's always been the practice in this court, and I assume it will be the case with this trial.

However, in the last couple of years, I have added an additional aspect to that process. During the trial, I get both sides to give me a single contact person for the Plaintiff and a cell phone number that that person has, and I get a contact person for the Defendants and a cell phone number for that person.

And in this case, I have Mr. Ward's name and phone number for the Plaintiff and Ms. Smith's name and phone number for the Defendants. And I have those names and phone numbers printed on slips of paper that I'm going to give you in a few minutes.

And that means if you don't want to stop today and have a conversation on the sidewalk in the front of this building but next week or next month all the sudden you decide you'd like to talk to one or both of them, you'll have their numbers, you can call them, and I am confident they will take your call. Because I know having practiced

here, lawyers on either side of the case, no matter what the result is, are always interested in getting feedback from the jury.

Again, you have to initiate it. They will not initiate it. They will not call you. They will not contact you. It's up to you. And if you never contact anybody about this trial at all, that is perfectly fine. Again, let me reiterate, it is 100 percent up to you and nobody else.

Also, ladies and gentlemen, since I have been on the bench here, I have always followed one other practice at this point, and that is as the trial comes to a conclusion, as the verdict is accepted, as the jury is excused, I've always asked the jury to do me a personal favor. And that is instead of immediately leaving the building, if you would leave the jury box in just a few minutes when I tell you and if you would meet me back in the jury room, I'd like to come off of the bench, I will put on a mask, and I'd like to thank each one of you face-to-face, person-to-person for your service as jurors in this case.

What you've done is very real and important public service of the highest type. And I think it warrants a personal word of thanks from the Court to each of you.

I have a certificate and a letter of appreciation

I'd like to give you from the Court. And you can take it with you. And I promise you, I will not keep you very long. I know this trial has gone longer than I told you I thought it would go when you appeared for jury selection. But if you would do me that personal honor, I would appreciate it.

I have suspended that practice through most of last year because of the pandemic. But, thankfully, I've had the vaccine, and I have a mask, and if you don't mind, I'd like to come in and at a reasonable distance at least tell you personally how much the Court and the Court staff and these officers of the court, the lawyers on both sides of the case, appreciate what you've done.

Because all of us recognize that we could not function and we could not do what the law and the Constitution require us to do without ordinary citizens who step forward, are responsible, and present themselves to serve and do serve as jurors in a trial like this. You are an absolutely indispensable part of the process, and you've made a very real and personal sacrifice to serve on this jury. And I think that's worthy of a personal and a direct word of thanks.

So if you don't mind and if you would do me that privilege without me keeping you very long at all, I'd ask that you do that.

And if, ladies and gentlemen, you would meet me in the court -- in the jury room, I'll be there in just a second to thank you and then let you be on your way.

The jury is excused to the jury room.

COURT SECURITY OFFICER: All rise.

(Jury out.)

THE COURT: Counsel, that completes the trial of this case. You are excused.

COURT SECURITY OFFICER: All rise.

(Court adjourned.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
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3/8/2021
Date